

JAN 19 1989

JOSEPH E. SPANIO, JR.  
CLERK

IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1988

THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY,  
*Petitioner,*

v.

RAILWAY LABOR EXECUTIVES' ASSOCIATION,  
*Respondent.*

THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY,  
*Petitioner,*

v.

RAILWAY LABOR EXECUTIVES' ASSOCIATION,  
INTERSTATE COMMERCE COMMISSION,  
*Respondents.*

**ON WRITS OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE THIRD CIRCUIT**

**JOINT APPENDIX**

RICHARD L. WYATT, Jr.\*  
RONALD M. JOHNSON  
CHARLES L. WARREN  
AKIN, GUMP, STRAUSS,  
HAUER & FELD  
1333 New Hampshire Ave., N.W.  
Suite 40<sup>n</sup>  
Washington, D.C. 20036  
(202) 887-4000

WILLIAM G. MAHONEY  
JOHN O'B. CLARKE, JR.\*  
HIGSAW & MAHONEY, P.C.  
Suite 210  
1050 17th Street, N.W.  
Washington, D.C. 20036  
(202) 296-8500  
*Counsel for Respondent*

G. EDWARD YURCON  
THE PITTSBURGH & LAKE ERIE  
RAILROAD COMPANY  
780 Commerce Court  
Four Station Square  
Pittsburgh, Pennsylvania 15219  
(412) 263-3806  
*Counsel for Petitioner*

*\*Counsel of Record*

## TABLE OF CONTENTS

	Page
Docket Entries - Railway Labor Executives' Association v. Pittsburgh & Lake Erie Railroad Company, No. 87-1745 (W.D. Pennsylvania Filed August 19, 1987) .....	JA-1
Plaintiff's Complaint (Filed August 19, 1987) ....	JA-7
Defendant's First Amended Answer and Counterclaim (Filed September 16, 1987) .....	JA-13
Affidavit of Gordon E. Neuenschwander (Dated September 10, 1987) .....	JA-21
Affidavit of James D. Peters (Dated September 16, 1987) .....	JA-25
Exhibit 1 to Peters Affidavit - Letter to P&LE Employees re Planned Sale to Railco (Dated July 31, 1987) .....	JA-29
Exhibit 2(a) to Peters Affidavit - Letter to Gordon E. Neuenschwander from Frank Ferlin, Jr., President, ARASA Division/BRAC (Dated August 7, 1987) .....	JA-31
Exhibit 4(a) to Peters Affidavit - Letter to Alex Sarcone, IAM, from Gordon E. Neuenschwander (Dated August 17, 1987) .....	JA-33
Exhibits 5(a) to 5(i) to Peters Affidavit - Section 6 Notices .....	JA-35
Declaration of Robert A. Scardelletti (Dated September 16, 1987) .....	JA-68
Exhibit 1(a) to Scardelletti Declaration - Letter to R.A. Scardelletti from James D. Peters (Dated July 30, 1987) .....	JA-70
Exhibit 1(c) to Scardelletti Declaration - Letter to Gordon E. Neuenschwander re Sale of the P&LE Railroad (Dated August 7, 1987) .....	JA-71

Exhibit 1(d) to Scardelletti Declaration - Letter to R.A. Scardelletti from Gordon E. Neuenschwander (Dated August 10, 1987) ..	JA-73
Exhibit 1(e) to Scardelletti Declaration - Letter to R.A. Scardelletti from Gordon E. Neuenschwander (Dated August 17, 1987) ..	JA-74
Exhibit 1(f) to Scardelletti Declaration - Letter to R.A. Scardelletti from Gordon E. Neuenschwander (Dated September 1, 1987) ..	JA-76
Exhibit 1(h) to Scardelletti Declaration - Mailgram from R.A. Scardelletti to Gordon E. Neuenschwander (Dated September 4, 1987) ..	JA-78
Excerpts from Transcript of Proceedings on Defendant's Motion for Temporary Restraining Order (Date September 16, 1987) .. (Testimony of Gordon E. Neuenschwander)	JA-79
First Supplemental Affidavit of Gordon E. Neuenschwander (Dated September 21, 1987) ..	JA-94
First Supplemental Affidavit of James D. Peters (Dated September 21, 1987) ..	JA-96
RLEA ICC Petition to Reject Notices of Exemption (Filed September 25, 1987) ..	JA-99
RLEA ICC Complaint for Cease and Desist Order (Filed September 24, 1987) ..	JA-109
Second Supplemental Affidavit of James D. Peters (Dated September 30, 1987) ..	JA-117
Exhibit 1 to Peters Second Supplemental Affidavit - Section 6 Notice (Dated September 16, 1987) ..	JA-120
Exhibit 2 to Peters Second Supplemental Affidavit - Section 6 Notice (Dated September 8, 1987) ..	JA-124
Second Supplemental Affidavit of Gordon E. Neuenschwander (Dated October 2, 1987) ..	JA-128

RLEA ICC Petition for Reconsideration of Denial of Stay of Notices of Exemption (Filed October 7, 1987) ..	JA-130
RLEA ICC Petition for Revocation of Exemptions (Filed October 2, 1987) ..	JA-141
Exhibit to Petition for Revocation of Exemptions - Declaration of Brian M. Freeman (Dated October 2, 1987) ..	JA-151
Declaration of William E. LaRue (Dated October 7, 1987) ..	JA-157
Exhibit 1(a) to LaRue Declaration - Mailgram to James D. Peters from William E. LaRue (Dated September 21, 1987) ..	JA-162
Exhibit 1(b) to LaRue Declaration - Mailgram to Gordon E. Neuenschwander from William E. LaRue (Dated September 21, 1987) ..	JA-163
Exhibit 1(c) to LaRue Declaration - Letter to Brian M. Freeman from Gordon E. Neuenschwander (Dated September 22, 1987) ..	JA-164
Exhibit 1(d) to LaRue Declaration - Mailgram from James D. Peters to William E. LaRue (Dated October 5, 1987) ..	JA-165
Third Supplemental Affidavit of James D. Peters (Dated September 21, 1987) ..	JA-166
Exhibit 1 to Peters Third Supplemental Affidavit - RLEA's Supplemental Effects Bargaining Proposal (Dated September 24, 1987) ..	JA-170
Affidavit of R.E. Smith (Dated October 8, 1987) ..	JA-173
Excerpts from Transcript of Hearing on Temporary Restraining Order (Date October 8, 1987) ..	JA-174
Testimony of Donald Vogel ..	JA-177
Testimony of William E. LaRue ..	JA-184
Press Release, Labor Group to Save P&LE Jobs (Dated October 27, 1987) ..	JA-187



Mailgram from Donald Vogel to James D. Peters (Dated November 3, 1987) .....	JA-189
Third Supplemental Affidavit of Gordon E. Neuenschwander (Dated November 13, 1987) .....	JA-190
Fourth Supplemental Affidavit of James D. Pe- ters (Dated November 13, 1987) .....	JA-193
RLEA Motion for Summary Judgment (Filed No- vember 13, 1987) .....	JA-195
Fifth Supplemental Affidavit of James D. Peters (Dated November 18, 1987) .....	JA-197
Memorandum Agreement between P&LE and BRAC .....	JA-199
Memorandum Agreement between P&LE and ARASA Lodge 5061 .....	JA-202
Memorandum Agreement between P&LE and ARASA Lodge 5062 .....	JA-205
Memorandum Agreement between P&LE and BLE .....	JA-208
Excerpts from Transcript of Telephone Confer- ence (Date November 23, 1987) .....	JA-211
Supreme Court Order Granting Certiorari in No. 87-1589 (Dated November 28, 1988) .....	JA-215
Supreme Court Order Granting Certiorari in No. 87-1888 (Dated November 28, 1988) .....	JA-216

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT  
OF PENNSYLVANIA**

No. 87-1745

**Docket Entries**

DATE	NR.	PROCEEDINGS
1987		C.A. 87-1745 (Railway Labor Executives As- soc. v. Pgh. & Lake Erie R.R.)
Aug. 19	1	Complaint for Declaratory & Injunctive Relief filed.
Aug. 19	—	Summons issued.
Aug. 24	2	Return of service of summons & complaint filed by pltf. on deft. Pgh & Lake Erie Railroad Co. by certified mail on 8-20-87.
Sept. 9	3	Entry of appearance of John J. Repenack, Esq. as counsel for deft. filed.
Sept. 9	4	ANSWER of deft. filed.
Sept. 14	5	<b>NOTICE fixing status for 12/8/87 at 3:30</b>
Sept. 16	6	Entry of appearance of counsel on behalf of Pgh & Lake Erie Railroad Co filed by Atty Richard Wyatt, 1333 New Hampshire Avenue, Washington, D.C.
Sept. 16	7	Temporary restraining order and order to show cause filed by deft with a proposed order.
Sept. 16	8	Motion for temporary restraining order and pre- liminary injunction filed by deft.
Sept. 16	9	Notice of filing of first amended answer as of course and notice of motion for temporary or- der filed by deft.
Sept. 16	10	First amended ANSWER filed by deft.
Sept. 16	11	Affidavit of Gordon E. Neuenschwander filed.
Sept. 16	12	Affidavit of James D. Peters filed.
Sept. 17	13	TRO nearing held before Rosenberg, J on 9- 16-87 and 9-17-87 (Rep: Don Harrington) memo filed; motion for TRO withdrawn; exhibit list attached thereto.



Sept. 18 14 Opposition of Railway Labor Executives Association to application for temporary restraining order filed. (Missing)

Sept. 18 15 Declaration of Robert A. Scardelletti filed.

Sept. 21 16 Transcript of proceedings of the testimony of Gordon E. Neuenschwander on 9-16-87 Rosenberg, J filed by Official Ct. Reporter Donald Harrington.

Sept. 21 17 Notice of motion for temporary restraining order filed by deft.

Sept. 21 18 Motion for temporary restraining order and preliminary injunction filed by deft which a proposed order.

Sept. 21 19 Certificate of service of the notice of motion for TRO and preliminary injunction memorandum of points and authorities on pltf on 9-21-87 filed by Ronald M. Johnson.

Sept. 21 20 First supplemental affidavit of Gordon E. Neuenschwander filed.

Sept. 21 21 First supplemental affidavit of James D. Peters filed.

Sept. 22 22 Transcript proceedings of nearing held on 9-21-87 before Bloch, J filed by official Ct. Reporter Jordan Lilienthal.

Sept. 22 23 Motion for TRO hearing held before Bloch, J (Rep: J. Lilienthal; memo filed; Judge denied defts motion for TRO.

Sept. 22 24 Attachments to Motion for TRO filed by deft.

Sept. 22 25 Motion to withdraw counsel filed by John J. Repcheck, Esq. with a proposed order.

Sept. 23 25 Order entered dated 9-23-87, directing that the appearance of John J. Repcheck, Esq. & Sharlock, Repcheck & Mahler as attys for deft. Pgh. & Lake Erie Railroad Co. is withdrawn. (Bloch, J.)

Sept. 24 — Pursuant to order entered, John J. Repcheck, Esq & Sharlock, Repcheck & Mahler are hereby withdrawn from this case.

CATHERINE D. MARTRANC, CLERK

Sept. 28 26 Transcript of Motion for TRO held 9-21-87 before Bloch, J. filed. (Rept: J. Lilienthal)

Sept. 30 27 MOTION to DISMISS By deft.

Sept. 30 28 SECOND SUPPLEMENTAL AFFIDAVIT of James D. Peters

Oct. 2 29 ORDER Dated 10-1-87 that pltf. file reply brief to deft's Motion to Dismiss by 10-16-87. EOD: 10-2-87; cm: all parties of record. (Bloch, J.)

Oct. 5 30 SECOND SUPPLEMENTAL affidvit of Gordon E. Neuenschwander.

Oct. 5 31 NOTICE OF RENEWED MOTION for temporary restraining order and preliminary injunction by deft.

Oct. 5 — TEMPORARY restraining order and order to show cause recd from deft.

Oct. 7 32 DECLARATION of William Larue

Oct. 7 33 ANSWER to COUNTERCLAIM By pltf.

Oct. 7 34 AFFIDAVIT of R.E. Smith

Oct. 8 35 THIRD SUPPLEMENTAL AFFIDAVIT of James D. Peters

Oct. 8 36 FINDINGS OF FACT. EOD: 10-8-87; cm: all parties of record. (Bloch, J.)

Oct. 8 37 TEMPORARY RESTRAINING ORDER dated 10-8-87 that pltf's are restraining from picketing or interfering with deft's operations: pltf's to issue notice to take necessary steps to effect TRO; Court to retain jurisdiction to issue; TRO to remain in effect until Court rules on deft's preliminary injunction. EOD: 10-8-87; cm: all parties of record. (Bloch, J.)

Oct. 8 38 NOTICE OF APPEAL FROM ORDER dated 10-8-87 by pltf. (FEE PAID-TPO GIVEN)

Oct. 9 — CERTIFIED Copy of Notice of Appeal & docket entries, copy of information sheet & ORDER dated 10-8-87 appealed from mailed to Ct of Appeals; copy of appeal & information sheet to Bloch, J. deft's counsel, J. Lilienthal, Ct. reporter; copy of information sheet to pltf's counsel.

Oct. 9 39 HEARING ON DEFT's Motion for TRO held 10-8-87 before Bloch, J; memo filed. (Rept: J. Lilienthal)

Oct. 13 40 TRO ording transcript of 10-8-87 by pltf. counsel.

Oct. 16 — COPY of LETTER from SUCA advising appeal docketed at 87-3664.

Oct. 16 40a TRANSCRIPT of TRO held 10-8-87 before Bloch, J. (Rep: J. Lilienthal)

Oct. 19 41 NOTICE scheduling Status Conf for 1-5-88 at 3:30 PM before Bloch, J.

Oct. 19 42 OPPOSITION to deft's Motion to Dismiss by pltf.

Oct. 28 43 CERTIFIED COPY of order from USCA reversing & remanding order of District Court of 10-8-87.

Nov. 2 — SLIP OPINION rec'd from USCA reversing & remanding order of District Court of 10-8-87

Nov. 12 44 REPLY to pltf's opposition to deft's Motion to Dismiss by deft.

Nov. 16 45 MOTION for PRELIMINARY INJUNCTION by deft w/prop order

Nov. 16 46 APPLICATION for TRO by pltf.

Nov. 16 47 MOTION for Summary Judgment by pltf.

Nov. 16 48 MOTION for Prelim. Injunction by pltf.

Nov. 17 49 FOURTH SUPPLEMENTAL AFFIDAVIT of James D. Peters.

Nov. 18 50 OPPOSITION to pltf's motion for summary judgment & its alternative request for injunctive relief by defts.

Nov. 18 51 CERTIFICATE of SERVICE of Opposition to pltf's motion for summary judgment by deft.

Nov. 18 52 OPPOSITION to deft's Motion for Prelim. Injunction by pltf.

Nov. 19 53 FIFTH SUPPLEMENTAL AFFIDAVIT of James D. Peters

Nov. 23 54 ERRATA SHEET to deft's opposition to pltf's motion for summary judgment & its alternative request for injunctive relief by deft.

Nov. 25 55 TRANSCRIPT of telephone conference held 11-20-87 before Bloch, J. (Rept: V. Pease) (filed this number)

Nov. 25 56 TRANSCRIPT of telephone conference of 11-23-87 cm: all parties of record. (Bloch, J.)

Nov. 25 57 OPINION date 11-24-87. EOD: 11-25-87 cm: all parties of record. (Bloch, J.)

Nov. 25 58 ORDER dated 11-24-87 that deft's motion to dismiss is denied; pltf motion for summary judgment is granted; further that deft to comply w/provisions of the Railway Labor Act in re: resoltuion of the major dispute; further that deft is enjoined from altering the rates of pay, rules & working conditions; futher that the sale deft's assets in enjoined to the extent that such sale does not provide for the maintainence of status quo. EOD: 11-25-87 cm: all parties of record. (Bloch, J.)

Nov. 25 — NOTICES mailed

Nov. 25 59 NOTICE OF APPEAL of ORDER dated 11-24-87 by deft. (FEE PAID-TPO GIVEN)

Nov. 25 — CERTIFIED copy of notice of appeal & docket entries; orig. of information sheet & ORDER dated 11-24-87 appealed from mailed to USCA; copy of notice of appeal & information sheet to Bloch, J., all counsel or record, Ct. Repts: V. Pease & J. Lilienthal; copy of info sheet to deft's counsel.

Dec. 2 60 ORDER dated 12/2/87 that opinion of 11-24-87 is amended as further stated in order EOD: 12-2-87 cm: all parties of record. (Bloch, J.)

Dec. 7 — LETTER from USCA advising appeal docketed at 87-3797

- Dec. 14 61 CERTIFIED COPY of order from USCA that appellant's emergency motion for summary reversal of stay of injunction pending appeal is denied; motion by ICC for leave to intervene in support of appellant is granted.
- 1988
- Apr. 18 — SLIP OPINION from USCA, vacating USDC's order of summary judgment in favor of pltf, Union & ordering deft to bargain under RLA & remand w/instructions to dismiss.
- Apr. 25 — INFORMATION SHEET on POST DECISION matters from USCA advising a petition for writ of certiorari was filed on 3-24-88 in the Supreme Ct. as S.C. #87-1589.
- May 4 62 CERTIFIED COPY of judgment from USCA affirming judgment of USDC of 11-25-87. Costs taxed against appellant.
- May 4 — SLIP OPINION from USCA.; Receipt for same mailed to USCA
- June 15 — INFORMATION SHEET on POST DECISION matters from USCA advising that a petition for writ of certiorari was filed on 5-17-88 in the Supreme Ct. at S.C. #87-1888
- Sept. 6 — INFORMATION SHEET on POST DECISION matters from USCA advising a petition for writ of certiorari was filed 8-5-88 in the Supreme Ct. at S.C. #88-217
- Dec. 5 — INFORMATION SHEET on Post Decision matters from the USCA advising that a petition for writ of certiorari was granted on 11-28-88.
- Dec. 7 — Info Sheet, Petition for Writ of Certiorari was denied on 11/28/88
- 1989
- Jan. 3 63 LETTER requesting record to be forwarded to the U.S. Supreme Court received from Court of Appeals.
- Jan. 4 — ORIGINAL Certified record forwarded to U.S. Supreme Court

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT  
OF PENNSYLVANIA

Civil Action No. 87-1745

RAILWAY LABOR EXECUTIVES' ASSOCIATION  
400 First Street, N.W., Suite 804  
Washington, D.C. 20001

*Plaintiff*

v.

PITTSBURGH & LAKE ERIE RAILROAD CO.  
Commerce Court  
Four Station Square  
Pittsburgh, Pennsylvania 15219

*Defendant*

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

1. In this complaint plaintiff Railway Labor Executives' Association ("RLEA") seeks to enforce the rights of the employees of defendant Pittsburgh & Lake Erie Railroad Co. ("P&LE") under the Railway Labor Act ("RLA"), 45 U.S.C. §151, *et seq.* The claims presented in this case arise from P&LE's decision to sell its rail lines and operating properties without providing its employees with notice of that sale and opportunity for negotiations as is required by the RLA. The RLEA seeks an order declaring that the P&LE must comply with the requirements of the RLA before implementing the transaction and an order enjoining P&LE from proceeding with the transaction until all RLA processes are exhausted.



### PARTIES

2. Plaintiff RLEA is an unincorporated association of the Chief Executive Officers of nineteen (19) labor organizations which collectively represent most of the organized rail employees in this country, including virtually all of P&LE's organized employees. A list of RLEA's member organizations is attached hereto as RLEA Exhibit 1.

3. The labor organizations which represent P&LE employees and whose chief executive officers are members of the RLEA are "representative[s]" as that term is defined in Section 1 Sixth of the Railway Labor Act, 45 U.S.C. §151 Sixth. Those organizations are the duly designated representatives of various crafts or classes of P&LE employees, including employees who work and live in this judicial district.

4. Defendant P&LE owns and operates a 182 mile rail line which runs from Connellsville, Pennsylvania to Youngstown, Ohio and is a rail carrier within the meaning of Section 1 First of the RLA, 45 U.S.C. §151 First.

### JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this cause of action by virtue of 28 U.S.C. §§1331 and 1337 because this action is to enforce rights under the RLA (an Act of Congress to regulate interstate commerce). The Court has the jurisdiction to issue a declaratory judgment and incidental injunctive relief under 28 U.S.C. § 2201, *et seq.*

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(b) and (c) because defendant maintains its offices in this district and does business in this district.

### CAUSE OF ACTION

7. Various labor organizations whose chief executive officers are members of the RLEA have collective bargaining

agreements with P&LE which cover the various crafts and classes of P&LE employees.

8. On July 31, 1987, the P&LE notified its employees that it had reached "an agreement with a subsidiary of the Chicago West Pullman Transportation Corporation, which when finalized, would result in its purchase of all the P&LE's rail lines and operating properties" as well as "a substantial number of freight cars and all the P&LE's operating locomotives." A copy of P&LE's letter is attached hereto as RLEA Exhibit 2.

9. On August 7, 1987, in response to this notification, various rail labor organizations sent telegrams or letters to the President of the P&LE advising that those labor organizations believed that the sale of P&LE's rail line, operating properties and other assets would constitute a change in the working conditions of its employees and that P&LE could not implement the proposed sale without compliance with the requirements of Section 6 of the RLA regarding notice and negotiations. The various organizations also requested that they be provided with certain information about this transaction. Copies of telegrams and letters sent by various rail labor organizations are attached hereto as RLEA Exhibits 3a-3d.

10. The Railway Labor Act requires that rail carriers provide rail unions with at least thirty (30) days written notice of any intended change in rates of pay, rules, or working conditions and to negotiate concerning any such intended change, RLA Section 6, (45 U.S.C. §156); that rail carriers not change rates of pay, rules, and working conditions except as prescribed by Section 6, RLA Section 2 Seventh (45 U.S.C. §152 Seventh); and that carriers must "exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all disputes. . . ." RLA Section 2 First (45 U.S.C. §152 First).

11. As of the date of this complaint, P&LE has not responded to the letters and telegrams sent by rail labor other than to send a letter dated August 10, 1987, to some organizations stating that P&LE would respond to their letters or telegrams within a week. Copies of two of those letters are attached hereto as RLEA Exhibits 4a and 4b.

12. As of the date of this complaint, the P&LE has not responded substantively to the letters and telegrams sent by rail labor or provided the various rail labor organizations which represent its employees of notice of the agreement to sell its rail lines, operating properties and certain assets in the manner which is required by the RLA.

13. As of the date of this complaint, the P&LE has not sought negotiations with the various rail labor organizations which represent its employees as is required by the RLA.

14. Should the P&LE proceed with the sale of its rail line, operating properties and certain other assets without first providing the labor organizations which represent its employees with notice of the sale in the manner required by the RLA and participating in negotiations concerning the sale, including its decision to make the sale and its effects on P&LE employees, the P&LE will violate Section 2 First and Seventh and Section 6 of the RLA.

15. Should the P&LE proceed with the sale of its rail line, operating properties and certain other assets without first providing the labor organizations which represent its employees with notice of the sale in the manner required by the RLA and participating in negotiations concerning the sale including its decision to make the sale, and its effects on P&LE employees, the P&LE will fail to make every reasonable effort to settle all disputes and maintain its collective bargaining agreements with the various labor organizations which represent its employees, in violation of Section 2 First of the RLA.

16. Should the P&LE proceed with the sale of its rail line, operating properties and certain other assets without first providing the labor organizations which represent its employees with notice of the sale in the manner required by the RLA and participating in negotiations concerning the sale, including its decision to make the sale and its effects on P&LE employees, its employees will be irreparably harmed.

### RELIEF REQUESTED

WHEREFORE, plaintiff RLEA respectfully requests that this Court:

A. Declare that P&LE is required by the Railway Labor Act to negotiate with the unions representing its employees before completing the sale of its rail line, operating properties and certain assets;

B. Declare that P&LE must make every reasonable effort to maintain the agreements covering the employees affected by a sale of its rail line, operating properties and assets as is required by the Railway Labor Act;

C. Declare that under Section 2 Seventh of the Railway Labor Act, P&LE may not complete any sale of its rail line, operating properties or assets until all Railway Labor Act dispute resolution procedures have been exhausted;

D. Enjoin P&LE from selling its rail line, operating properties or assets until it has complied fully with all of the provisions of the Railway Labor Act and all Railway Labor Act dispute resolution procedures have been exhausted;

E. Grant RLEA such other and further relief as this Court deems to be just and proper, including costs of this action.

Respectfully submitted,

/s/ Richard S. Edelman  
 William G. Mahoney  
 John O'B. Clarke, Jr.  
 William J. Birney  
 Richard S. Edelman

HIGSAW & MAHONEY, P.C.  
 Suite 210  
 1050 17th Street, N.W.  
 Washington, D.C. 20036  
 (202) 296-8500

/s/ G. R. Brewer  
 Graydon R. Brewer

GREENFIELD & MURTAGH  
 728 Fifth Avenue  
 Pittsburgh, Pennsylvania 15219  
 (412) 261-4466

*Attorneys for Plaintiff Railway  
 Labor Executives' Association*

Date: August 19, 1987

IN THE UNITED STATES DISTRICT COURT  
 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 87-1745  
 Judge Bloch

RAILWAY LABOR EXECUTIVES' ASSOCIATION,  
*Plaintiff,*

v.

PITTSBURGH AND LAKE ERIE RAILROAD COMPANY,  
*Defendant.*

FIRST AMENDED ANSWER

The Defendant, The Pittsburgh & Lake Erie Railroad Company ("P&LE"), by counsel, hereby answers the allegations set forth in the Complaint as follows:

1. P&LE admits that it has decided to sell its rail lines and some of its other assets, and otherwise denies the allegations set forth in Paragraph 1 of the Complaint.
2. Admitted upon information and belief.
3. Admitted upon information and belief.
4. Admitted.
5. The allegations set forth in Paragraph 5 of the Complaint require neither admission nor denial; to the extent an answer may be required, they are denied.
6. P&LE denies the allegations set forth in Paragraph 6 of the Complaint to the extent that they may imply that the district court's subject matter jurisdiction is properly invoked by the Complaint, and otherwise admits the allegations.
7. Admitted.



8. Admitted. The document attached to the Complaint as Exhibit 2 speaks for itself.

9. P&LE admits that it received the telegrams and letters attached to the Complaint as Exhibits 3a-3d, which documents speak for themselves, but lacks sufficient information to admit or deny when or for what reason the telegrams and letters were sent to P&LE.

10. The allegations of Paragraph 10 of the Complaint require neither admission nor denial. P&LE denies any violations of the Railway Labor Act, 45 U.S.C. § 151 *et seq.*

11. Denied.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

Defendant P&LE denies that Plaintiff Railway Labor Executives' Association has demonstrated its entitlement to the declarative, injunctive, and other relief sought in the Complaint.

#### AFFIRMATIVE DEFENSES

As affirmative defenses, Defendant, The Pittsburgh & Lake Erie Railroad Company, asserts the following:

1. The Complaint fails to state a claim upon which relief can be granted.

2. The Court lacks subject matter jurisdiction over the allegations of the Complaint.

3. The Complaint fails to join a necessary party pursuant to Rule 19 of the Federal Rules of Civil Procedure.

4. The Plaintiff has failed to exhaust administrative remedies.

5. The Plaintiff is estopped from obtaining the relief sought in the Complaint.

6. The claims made in the Complaint are not yet ripe for adjudication.

#### VERIFIED COUNTERCLAIM FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY AND PERMANENT INJUNCTION

Defendant P&LE, hereby counterclaiming against plaintiff RLEA, alleges and says:

1. This counterclaim arises under the Railway Labor Act ("RLA"), 45 U.S.C. § 151 *et seq.*, which was enacted to avoid any interruption to commerce or to the operation of a rail carrier engaged therein and for other purposes. This Court has jurisdiction of this matter under 28 U.S.C. §§ 1331 and 1337. Expedited injunctive relief is appropriate under 28 U.S.C. § 1657 and Federal Rule of Civil Procedure 65.

2. Plaintiff RLEA comprises an unincorporated association of executive officers of nineteen railway labor unions. Complaint ¶ 2.<sup>1</sup> All of the fourteen unions representing P&LE employees are members of RLEA.<sup>2</sup> RLEA's mem-

<sup>1</sup> Complaint Ex. 1 inadvertently lists only 18 RLEA members, but the Brotherhood of Maintenance of Way Employees ("BMWE") is also a member.

<sup>2</sup> The following fourteen unions represent P&LE employees: United Transportation Union ("UTU"); Brotherhood of Locomotive Engineers ("BLE"); Brotherhood of Railway, Airline & Steamship Clerks, Freight Handlers, Express & Station Employees ("BRAC"); American Railway & Airway Supervisors Association (Division of BRAC) ("ARASA"); American Train Dispatchers Association ("Dispatchers"); Railroad Yardmasters of America (Division of UTU) ("Yardmasters"); Brotherhood of Maintenance of Way Employees ("BMWE"); Brotherhood of Railroad

ber unions are labor "representatives" within the meaning of the RLA, 45 U.S.C. § 151, Sixth.

3. P&LE's unions have consented that RLEA acts on their behalf in this lawsuit and that they are bound, through RLEA's appearance, by the rulings and orders of this Court. See Complaint ¶¶ 2, 3, 7.

4. Defendant P&LE is a privately-held corporation incorporated in the State of Delaware with its principal place of business in Pittsburgh, Pennsylvania. P&LE operates a 182-mile railroad in western Pennsylvania and eastern Ohio, transporting coal and steel to the Great Lakes region. P&LE is a "carrier" within the meaning of the RLA, 45 U.S.C. § 151, First.

5. P&LE has entered into an agreement to sell its rail line and certain other assets to an Ohio corporation, P&LE Railco, Inc. ("Railco"). The transaction is subject to the Interstate Commerce Act ("ICA"), 49 U.S.C. 10101 *et seq.* Upon the sale, P&LE will no longer be a rail carrier.

6. P&LE has experienced severe financial difficulties as a result of the declining fortunes of the U.S. steel industry. P&LE owners believe that the opportunity to consummate the sale to Railco represents the railroad's best, and probably only, long-term chance for continued viability. The sale will thus help to ensure continued rail service and rail jobs in the area around Pittsburgh.

7. P&LE notified its employees of the anticipated sale on July 30, 1987. See Complaint Ex. 2. Within two weeks, 12 of the 14 unions representing P&LE employees con-

---

Signalmen ("Signalmen"); International Association of Machinists and Aerospace Workers ("IAM"); International Brotherhood of Electrical Workers ("IBEW"); Sheet Metal Workers International Association ("Sheet Metal Workers"); International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers ("Boilermakers"); International Brotherhood of Firemen & Oilers ("Firemen"); Transport Workers Union of America ("TWU").

tended to P&LE that P&LE was required by the RLA to bargain over the sale and its effects before its consummation. Several of these unions subsequently served a formal notice to P&LE requesting bargaining pursuant to RLA Section 6, 45 U.S.C. § 156.

8. P&LE responded that it was willing to meet with the unions, but did not consider the anticipated sale to be a necessary or appropriate subject of Section 6 bargaining. A meeting has been scheduled with P&LE's unions for September 25, 1987.

9. On August 19, 1987, the RLEA initiated this action against P&LE, seeking to block the sale to Railco until P&LE has bargained with the P&LE unions over the sale and its effects.

10. The railroad industry is subject to the ICA, which vests exclusive jurisdiction over entry and exit from the railroad business in the Interstate Commerce Commission ("ICC"). The ICC can attach such conditions to railroad transactions as it finds "necessary in the public interest." 49 U.S.C. § 10901(c)(1)(A)(ii). The ICC has discretionary authority to fashion labor protective conditions to protect the interests of employees adversely affected by transactions like the anticipated sale of P&LE's rail lines. 49 U.S.C. § 10901.

11. The sale of P&LE's assets to Railco cannot be consummated until the ICC has reviewed the sale. It is believed that Railco will apply to the ICC for approval of the sale transaction on or about September 18, 1987. Rail unions and the RLEA can, and have, participated in ICC proceedings concerning the sale of rail lines.

12. Upon information and belief, at the direction of RLEA, one or more of P&LE's unions and their local and international officials, engaged in picketing of P&LE's facilities commencing the evening of September 15, 1987. The planned strike is believed to be designed for two un-

lawful purposes: (1) to retaliate against P&LE for its lawful position respecting its bargaining obligations under the RLA, and (2) to disrupt the sale transaction.

13. Unless enjoined, the strike and other picketing activity by P&LE's unions will disrupt P&LE's operations and result in their shutdown, causing irreparable injury to P&LE and injury to P&LE's shippers, its employees and the economies of the communities served by P&LE. Unless restrained, the strike could also interfere with and preclude P&LE from finalizing the sale of its assets to Railco. The uncertainty over P&LE's future will only further hamper the long-term viability of P&LE's operation.

14. Failure to grant the relief requested will cause immediate irreparable damage and loss to P&LE, to the public, to national commerce, and, ironically, to P&LE's union members themselves. Failure to grant the relief requested will cause greater damage to P&LE than the granting of such relief would cause to RLEA or P&LE's unions, for whom RLEA acts.

15. P&LE has duly complied with all requirements imposed by federal, state and local law. P&LE has not sought the relief requested herein in any other court.

#### COUNT 1

16. P&LE repeats and realleges the allegations of paragraphs 1 to 15.

17. The picketing and other action by RLEA and P&LE's unions designed to encourage P&LE's employees to withhold their services from P&LE violates the RLA, 45 U.S.C. § 151 *et seq.*

#### COUNT 2

18. P&LE repeats and realleges the allegations of paragraphs 1 to 15.

19. The picketing and other action by RLEA and P&LE's unions designed to encourage P&LE's employees to withhold their services from P&LE violates the ICA, 49 U.S.C. § 10101 *et seq.*

WHEREFORE, P&LE respectfully prays that this Court:

1. Issue a Temporary Restraining Order and a Preliminary Injunction, the same to be made permanent upon final hearing, directing and requiring RLEA, its member unions and their lodges, divisions, locals, officers, agents, employees, and representatives and all person acting in concert or participating with them, to cease and desist from authorizing, calling, causing, inducing, conducting, permitting, continuing in, or engaging in, any picketing, patrolling, self-help or disruptive behavior in any manner interfering with P&LE's operations.

2. Direct RLEA, its member unions and their lodges, divisions, locals, officers, agents, employees, and representatives and all persons acting in concert or participating with them, to issue such notices and instructions and take all other necessary steps, including intra-union discipline, to carry into effect the Orders of this Court.

3. Grant final judgment for P&LE against plaintiff prayed for herein, and provide such other and further relief in law and in equity, including costs and reasonable attorneys' fees, as the Court deems just and proper.

Respectfully submitted,

Of Counsel:

G. Edward Yurcon  
THE PITTSBURGH & LAKE  
ERIE RAILROAD COMPANY  
Suite 780 Commerce Court  
Four Station Square  
Pittsburgh, PA 15219  
(412) 261-3201

AKIN, GUMP, STRAUSS,  
HAUER & FELD  
1333 New Hampshire Ave.,  
N.W.  
Suite 400  
Washington, D.C. 20036  
(202) 887-4000



By: /s/ Ronald M. Johnson  
 Richard L. Wyatt, Jr.  
 Ronald M. Johnson  
 Patricia A. Casey

and

SHARLOCK, REPCHECK &  
 MAHLER  
 1110 Two Chatham Center  
 Pittsburgh, PA 15219  
 (412) 391-6171

By: /s/ John J. Repcheck/RMJ  
 John J. Repcheck

Dated: September 16, 1987

#### VERIFICATION

I, Gordon E. Neuenschwander, do hereby swear and affirm that I have read the foregoing Verified Counterclaim and that the allegations set forth therein are true and correct to the best of my personal knowledge.

/s/ Gordon E. Neuenschwander  
 Gordon E. Neuenschwander  
 President  
 The Pittsburgh & Lake Erie Railroad  
 Company

Subscribed and Sworn to before  
 me this 16th day of September, 1987

/s/ Kathleen G. Cavanaugh  
 Notary Public

My Commission Expires: 9-1-1990

#### ATTACHMENT "A"

#### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 87-1745

RAILWAY LABOR EXECUTIVES' ASSOCIATION,  
*Plaintiff,*

v.

PITTSBURGH AND LAKE ERIE RAILROAD COMPANY,  
*Defendant.*

#### AFFIDAVIT OF GORDON E. NEUENSCHWANDER

I, Gordon E. Neuenschwander, being duly sworn on oath, depose and state as follows:

1. I am President and Chief Executive Officer at The Pittsburgh and Lake Erie Railroad Company ("P&LE"). I have held this position since May 30, 1986. My business address is Commerce Court, Four Station Square, Pittsburgh, Pennsylvania 15219-1199.
2. The purpose of my affidavit is briefly to describe the P&LE and explain the irreparable impact of the strike or other labor unrest which threatens to shut down P&LE's operations, and the interchange of rail traffic to and from other rail carriers which connect with the P&LE.
3. The P&LE is a Class II carrier operating rail service over 182 miles of railroad running northwesterly from Brownsville and Connellsville, Pennsylvania through Pittsburgh, Pennsylvania to Youngstown, Ohio and by trackage rights over approximately 60 miles of Consolidated Rail Corporation track between Youngstown, Ohio and Ash-tabula, Ohio and over approximately 128 miles of Norfolk

Southern Corporation track between Ashtabula, Ohio and Buffalo, New York. The principal commodities that it carries are coal, iron ore, iron and steel products, and general merchandise freight.

4. The P&LE has suffered serious financial decline since 1981. Its accumulated losses in the past five years approximate 60 million dollars. The P&LE traffic has declined as a result of deregulation and the erosion of the basic steel and manufacturing industries it was designed to serve, in keeping with the general decline of the economy.

5. The P&LE has taken several steps to reverse its fortunes and insure its long term viability. Recently, it attempted to expand its route system and traffic base in connection with the proposed sale of Conrail to Norfolk Southern Corporation. However, Congress ultimately decided to leave Conrail independent, thereby foreclosing this opportunity.

6. On July 8, 1987, the P&LE entered into an agreement dated as of June 1, 1987 to sell certain of its assets, including its rail lines and operating properties to P&LE Railco, Inc., (Railco), a subsidiary of the Chicago West Pullman Transportation Corporation. The sale has not been completed. Railco has yet to file with the I.C.C. The sale of P&LE's lines to a new company, willing to invest new resources in its operations, is regarded as its last and only chance for long term viability and the preservation of any rail employment on the P&LE.

7. As described in the affidavit of Mr. James D. Peters, various P&LE unions are striking P&LE, because of the sale of P&LE's rail assets. The strike has interrupted P&LE's operations and will have an inescapable and irreparable impact upon P&LE, its chances of survival in any form, P&LE's employees, and the shippers and communities who utilize the P&LE within a short period of time.

8. The P&LE serves over thirty industries and handles approximately 75,000 cars of freight per year. The P&LE carries coal for electric generating plants, iron and steel products and general merchandise traffic. The P&LE, under current operating conditions, earns on average daily operating revenues of about \$93,000.00. The curtailment of P&LE's operations by labor unrest will cause these revenues to be permanently lost to P&LE.

9. The P&LE also interchanges freight with thirteen connecting carriers, including the Monongahela Railway Company, Consolidated Rail Corporation and CSX Transportation (which includes the former Baltimore and Ohio Railroad and Chesapeake and Ohio Railway), the Norfolk Southern Corporation and the Delaware and Hudson Railway Company. Interruption of P&LE's operations will affect the operations of these connecting carriers and impair the interchange of traffic in interstate commerce.

10. Interruption of P&LE's operations will further have a ripple effect throughout the areas it serves and beyond by disrupting the operations of the industries it serves directly or indirectly. Disruption of those industries could result in the furlough of their employees.

11. Some freight which normally moves over the P&LE will switch to other transportation alternatives or to other rail carriers which jointly serve points common to them and P&LE. If this diversion becomes permanent, the P&LE's financial position would be even further weakened and could result in its discontinuance of rail service.

12. A strike will damage P&LE's ability to follow through on the sale of its assets to P&LE Railco. If this sale is not consummated, it is unlikely that the P&LE could find another buyer willing to agree to the same terms and conditions of sale.

13. For all of these reasons, an interruption of P&LE's operations will have a devastating effect upon P&LE.

/s/ Gordon E. Neuenschwander  
Gordon E. Neuenschwander

Sworn and Subscribed to this 10th Day of September 1987.

/s/ Kathleen G. Cavanaugh  
Notary Public

My Commission Expires: 9-1-1990

ATTACHMENT "B"

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

\_\_\_\_\_  
**Civil Action No. 87-1745**  
\_\_\_\_\_

RAILWAY LABOR EXECUTIVES' ASSOCIATION,  
*Plaintiff,*

v.

PITTSBURGH AND LAKE ERIE RAILROAD COMPANY,  
*Defendant.*

**AFFIDAVIT OF JAMES D. PETERS**

I, James D. Peters, being duly sworn on oath, depose and state as follows:

1. I am Director, Labor Relations, for The Pittsburgh and Lake Erie Railroad Company ("P&LE"). I have held this position since March 1, 1983. My duties include responsibility for all labor relations matters of the P&LE, and I administer P&LE's collective bargaining agreements with its fourteen unions.
2. P&LE is a common carrier by rail and has a legal responsibility to provide uninterrupted and prompt transportation service at points along its line.
3. The Railway Labor Executives' Association (R.E.L.A.) is an unincorporated association of the chief executive officers of nineteen (19) labor organizations which collectively represent all of the P&LE's organized employees and most of the organized employees of the other railroads in the United States.
4. On July 30, 1987, the P&LE informed its labor representatives of the proposed sale of all of its rail lines and



operating properties to a subsidiary of the Chicago West Pullman Transportation Corporation. A copy of the letter of Gordon E. Neuenschwander, President and Chief Executive Officer of the P&LE, mailed to all employees on July 31, 1987 was included with the notice to the labor representatives. A copy of our July 30, 1987 letter is attached as Exhibit No. 1.

5. Under various dates commencing on August 7, 1987, the labor organizations communicated with P&LE's President and Chief Executive Officer, Gordon E. Neuenschwander, requesting a meeting to discuss the proposed sale and asking for certain specific information relating thereto. Copies of the communications received from the labor organizations are attached as Exhibit Nos. 2(a) through 2(j).

6. Under date of August 10, 1987, P&LE advised the organizations that it had their requests under consideration and would respond within a week. A copy of Mr. Neuenschwander's letter is attached as Exhibit No. 3(a) through 3(j).

7. On August 17, 1987, Mr. Neuenschwander further advised the labor representatives that we were prepared to meet with them with regard to this matter in early September. A copy of Mr. Neuenschwander's letter is attached as Exhibit No. 4(a) through 4(k).

8. Under date of August 19, 1987, the Railway Labor Executives' Association filed its complaint in the U. S. District Court for the Western District of Pennsylvania, initiating this action, wherein it requested declaratory and injunctive relief alleging that P&LE was in violation of the Railway Labor Act for failing to negotiate with the organizations prior to signing the sales agreement.

9. The labor organizations served separate but similar Section 6 Notices starting on August 14, 1987 requesting that Carrier meet with the organizations collectively to discuss their proposals. Copies of the Notices are attached as Exhibit Nos. 5(a) through 5(i).

10. P&LE responded to the Section 6 Notices and suggested a meeting date to discuss said Notices. Copy of our responses are attached as Exhibit Nos. 6(a) through 6(i).

11. Although two labor organizations accepted the meeting date, the majority of the organizations advised that the September 25, 1987 suggested date was too late and requested an earlier date. In addition, the Brotherhood of Maintenance of Way Employees who were separately scheduled to meet on September 11, 1987 agreed to waive that meeting and meet jointly with the other organizations on September 25, 1987. Copies of these communications are attached as Exhibit Nos. 7(a) through 7(h).

12. On September 14, 1987, P&LE advised the labor organizations that protested the September 25th date that an earlier date could not be scheduled and reconfirmed the September 25, 1987 date including the time and precise location of meeting. Copies of Mr. Neuenschwander's letters are attached as Exhibit Nos. 8(a) through 8(g).

13. One additional Organization served a Section 6 Notice dated September 8, 1987 which was received on September 15, 1987 and has not been answered as of this date. Copy of this Notice is attached as Exhibit No. 9.

14. At approximately 9:00 P. M. on September 15, 1987 pickets started to appear at various locations on Carrier's property bearing signs stating:

"Transportation Communications  
International Union  
TCU-AFL-CIO On Strike."

15. Certain clerical employees that were on duty were called or personally advised that the Carrier was being struck and they should leave the property, which they did.

16. Subsequently pickets appeared bearing signs stating:

RLEA  
TWU On Strike  
Against The P&LE

17. P&LE has been and is in full compliance with all of its labor agreements, the R.L.E.A. There is no dispute between the P&LE and any of its representative labor organizations in which the resolution procedures provided for in the Railway Labor Act have been exhausted.

18. As a result of the before mentioned picketing, there is an interruption of P&LE operations and its employees have failed to report for their designated assignments. P&LE's transportation of freight to and from its many customers and as an overhead carrier is greatly impaired and is threatened with cessation.

19. Unless a temporary restraining order is issued pending the hearing of this case, the P&LE's operations will continue to be interrupted so that immediate, substantial and irreparable injury, loss and damage will continue to result to P&LE and its shipping public. In contrast, R.L.E.A. will not suffer any damages as a result of the entry of a temporary restraining order.

/s/ J. D. Peters  
J. D. Peters

Sworn to and subscribed before me, a Notary Public in and for the County of Allegheny, Pa., this 16th day of September, 1987.

/s/ Kathleen G. Cavanaugh  
Notary Public

My Commission Expires: 9-1-1990

**THE PITTSBURGH & LAKE ERIE  
RAILROAD COMPANY**

July 31, 1987

Dear P&LE Employee:

By now you have undoubtedly heard numerous rumors concerning the possible sale of the P&LE Railroad, and you have probably read the article in the business section of Tuesday's Pittsburgh Press which highlights that possibility. While no sale of the P&LE has been completed, I do wish to advise, however, that an agreement has now been reached with a subsidiary of Chicago West Pullman Transportation Corporation which, when finalized, would result in its purchase of all the P&LE's rail lines and operating properties. The transaction would also include the purchase of a substantial number of freight cars and all the P&LE's operating locomotives.

There are a number of contingencies which remain before such a sale could be completed, and you will be provided with further details concerning the proposed transaction as additional information becomes available.

The transaction was negotiated in an effort to insure continued rail operations in the face of mounting financial pressures and continuing operating losses. Based on our discussions, I sincerely believe that the new company's plans for operating the P&LE provide the most realistic alternative for preserving competitive rail service for our customers for years to come.

All of you in the P&LE family have worked hard and sacrificed over the past few years to keep the railroad operating under the most severe financial conditions. In addition, many of the labor organizations have entered into helpful concessionary agreements. However, in spite of these meaningful efforts, a permanent solution to the company's financial condition has not been achieved. After

much consideration, it is clear to me that the proposed sale provides the best opportunity for continued railroad operations.

Sincerely yours,

/s/ Gordon E. Neuenschwander  
Gordon E. Neuenschwander

**THE AMERICAN RAILWAY AND AIRWAY  
SUPERVISORS ASSOCIATION**

**A Division of BRAC-AFL-CIO-CLC-RLEA**

August 7, 1987

Gordon E. Neuenschwander  
President  
Pittsburgh & Lake Erie Railway Company  
Commerce Court  
4 Station Square  
Pittsburgh, PA 15219

Dear Mr. Neuenschwander:

You have advised Pittsburgh & Lake Erie employees that P & LE intends to sell its rail lines, operating properties, and much of its other assets to a subsidiary of the Chicago West Pullman Transportation Corporation, providing that certain contingencies are satisfied. You have not identified the name of the Chicago West Pullman subsidiary involved. Nor have you provided either the employees or this organization with any information regarding the contingencies which must be satisfied, an expected date for consummation, or anticipated effects upon employees.

Obviously, such a change in ownership will have a significant impact on the working conditions of the P & LE employees represented by this organization, however, to date this organization has not received a Section 6 notice under the Railway Labor Act regarding this transaction. It is the position of this organization that any consummation of this transaction without negotiations pursuant to the Railway Labor Act will be a violation of that statute. In that regard, this organization is prepared to meet with the P & LE to negotiate concerning all aspects of this matter including, but not limited to, the decision to sell the rail lines and other assets of the P & LE and the



effects of such a transaction on P & LE's employees who are represented by this organization. Additionally, we request that you furnish this organization with all information available regarding this transaction including, but not limited to, the contingencies which must yet be satisfied, what filings will be made with the ICC, the expected date for consummation, and anticipated effects on employees.

Sincerely,

/s/ Frank Ferlin, Jr.

Frank Ferlin, Jr.

President, ARASA Division/BRAC

FF/kka

cc: L. D. Marion, GC  
J. C. Shaw, GC

THE PITTSBURGH & LAKE ERIE  
RAILROAD COMPANY

August 17, 1987

Mr. Alex J. Sarcone, General Chairman  
International Association of Machinists  
and Aerospace Workers  
2326 Lucina Avenue  
Pittsburgh, PA 15210

Dear Mr. Sarcone:

In response to your August 13, 1987 telegram, in which you suggested that we meet to discuss the anticipated sale of Pittsburgh & Lake Erie rail lines and its effects on employees represented by your organization, please be advised that the P&LE is prepared to meet with you in early September with regard to this matter, and will advise you of the precise time and location as soon as the arrangements are complete.

We propose this meeting in the interests of keeping employees informed of plans for the P&LE's future, without prejudice to our position that "Section 6" bargaining under the Railway Labor Act is not necessary or appropriate in this instance. Your telegram does not constitute a Section 6 notice, nor should this response be viewed as an agreement to confer pursuant to that section of the statute. The anticipated transaction is controlled by the Interstate Commerce Act and is subject to the authority of the Interstate Commerce Commission. Section 6 bargaining, in the railroad's view, would usurp the ICC's authority over the transaction and management's prerogative to conduct the railroad's business as it sees fit.

With regard to your information requests, I expect that to the extent possible at present, your questions will be answered at our meeting.

Sincerely,

/s/ Gordon E. Neuenschwander  
Gordon E. Neuenschwander

**BROTHERHOOD OF MAINTENANCE  
OF WAY EMPLOYEES**

August 14, 1987

Mr. James D. Peters  
Director, Labor Relations  
Pittsburgh & Lake Erie Railroad Co.  
Suite 780, Commerce Court Building  
Four Station Square  
Pittsburgh, PA 15219

Dear Mr. Peters:

This letter serves as formal notice under Section 6 of the Railway Labor Act, as amended, to negotiate with the Pittsburgh & Lake Erie Railroad an agreement to ameliorate to the maximum extent possible the adverse impacts which the proposed sale of rail lines, operating properties and other assets will have on employees which this Organization represents.

Specifically, the Agreement which the Organization desires to negotiate would include provisions in Appendix A and B, attached hereto.

In accordance with Section 6 of the Railway Labor Act, we suggest that representatives of the Pittsburgh & Lake Erie Railroad meet with representatives of the Organization at 10 a.m., on Tuesday, September 1, 1987 at a mutual agreeable location in Pittsburgh. Please contact the undersigned to arrange the time and place of the conference.

With best wishes, I am

Very truly yours,

/s/ James P. Cassese

**THE AMERICAN RAILWAY AND AIRWAY  
SUPERVISORS ASSOCIATION  
A Division of BRAC-AFL-CIO-CLC-RLEA**

August 26, 1987

Mr. Gordon E. Neuenschwander, President  
Pittsburgh & Lake Erie Railway Company  
Commerce Court  
4 Station Square  
Pittsburgh, Pennsylvania 15219

Dear Mr. Neuenschwander:

In response to your notices to P & LE employees regarding the proposed sale of the P & LE's rail lines, operating properties and certain other assets, this Organization has advised you that it is our position that such a transaction cannot be effected without compliance with provisions of the Railway Labor Act regarding notice, negotiations and maintenance of the status quo pending completion of Railway Labor Act procedures. Additionally, we requested that you provide this Organization with information relating to this transaction.

The proposed sale will obviously affect the working conditions of P & LE employees so in the interest of expediting negotiations, but without prejudice to our position that P & LE had an obligation to serve its own Section 6 notice before entering any agreement for the sale of its rail line and other assets, please consider this letter a Section 6 notice; our proposals are contained in the attachment to this letter. This Organization intends to coordinate its bargaining in this manner with the other Organizations on the property and proposes that a meeting between P & LE and all of the Organizations be held on September 8, 1987; at a mutually agreeable location in Pittsburgh, Pennsylvania.

You have proposed a meeting in early September "in the interests of keeping employees informed of plans for P & LE's future". We are amenable to such a meeting without prejudice to this Organization's position regarding P & LE's obligations under the Railway Labor Act, and suggest that such a meeting be held concurrent with the initial meeting we have proposed for negotiations regarding our proposals.

In order to facilitate our discussions we again request that, in advance of our meeting, you provide us with information regarding this transaction; including, but not limited to, contingencies which must yet be satisfied for the proposed sale to be completed, what filings will be made with the ICC, the expected date for consummation, anticipated effects on employees, the terms of the proposed sale, the process by which purchasers were solicited and the identity of any individual or entity who or which is providing financing for this transaction.

Sincerely,

/s/ Frank Ferlin, Jr.  
Frank Ferlin, Jr.

President, ARASA Division/BRAC

FF/kka

cc: L. D. Marion, GC  
J. C. Shaw, GC



## ATTACHMENT

1. No employee of the P&LE Railroad Company who performed compensated service at any time between August 1, 1986 and August 1, 1987 or who was on an authorized leave of absence during that time period, who is represented by this organization shall be deprived of employment or placed in a worse position with respect to compensation or working conditions for any reason except resignation, retirement, death or dismissal for justifiable cause. Failure to relocate shall not be considered as justifiable cause for loss of benefits under this Agreement. The formulae for the protective allowances, with a separation option, shall be comparable to those established in the *New York Dock* conditions.
2. If an employee is placed in a worse position with respect to compensation or working conditions, that employee shall receive, in addition to a make-whole-remedy, penalty pay equal to three times the lost pay, fringe benefits and consequential damages suffered by such employee.
3. P&LE agrees to obtain binding commitments from any purchaser of its rail line operating properties and assets to assume all collective bargaining agreements (including this Agreement) with, and obligations to, P&LE employees who are represented by this Organization to hire P&LE employees in seniority order without physicals, and to negotiate with the P&LE and this Organization an agreement to apply this Agreement to the sale transactions and to select the forces to perform the work over the lines being acquired.
4. Any dispute or controversy over the application or interpretation of this Agreement shall be handled on the property in a expedited manner and may be referred by the employee or this Organization for ad-

justment in accordance with Section 3, Second of the Railway Labor Act to a Special Board of Adjustment to be established by the Agreement.

## BROTHERHOOD OF RAILROAD SIGNALMEN

R. T. Bates, President

August 26, 1987

Mr. Gordon E. Neuenschwander, President  
 Pittsburgh & Lake Erie Railway Company  
 Commerce Court  
 4 Station Square  
 Pittsburgh, Pennsylvania 15219

Dear Mr. Neuenschwander:

In response to your notices to P&LE employee regarding the proposed sale of the P&LE's rail lines, operating properties and certain other assets, this Organization has advised you that it is our position that such a transaction cannot be effected without compliance with provisions of the Railway Labor Act regarding notice, negotiations and maintenance of the status quo pending completion of Railway Labor Act procedures. Additionally, we requested that you provide this Organization with information relating to this transaction.

The proposed sale will obviously affect the working conditions of P&LE employees so in the interest of expediting negotiations, but without prejudice to our position that P&LE had an obligation to serve its own Section 6 notice before entering any agreement for the sale of its rail line and other assets, please consider this letter a Section 6 notice; our proposals are contained in the attachment to this letter. This Organization intends to coordinate its bargaining in this manner with the other Organizations on the property and proposes that a meeting between P&LE and all of the Organizations be held on September 8, 1987, at a mutually agreeable location in Pittsburgh, Pennsylvania.

You have proposed a meeting in early September "in the interests of keeping employees informed of plans for

P&LE's future." We are amenable to such a meeting without prejudice to this Organization's position regarding P&LE's obligations under the Railway Labor Act, and suggest that such a meeting be held concurrent with the initial meeting we have proposed for negotiations regarding our proposals.

In order to facilitate our discussions we again request that, in advance of our meeting, you provide us with information regarding this transaction; including, but not limited to, contingencies which must yet be satisfied for the proposed sale to be completed. what filings will be made with the ICC, the expected date for consummation, anticipated effects on employees, the terms of the proposed sale, the process by which purchasers were solicited and the identity of any individual or entity who or which is providing financing for this transaction.

Sincerely,

/s/ R.T. Bates  
 President

RTB/jdg  
 Encl.

cc: W. B. Harvell, VP  
 W. D. Pickett, VP  
 C. T. Green, GC

## ATTACHMENT

1. No employee of the P&LE Railroad Company who performed compensated service at any time between August 1, 1986 and August 1, 1987 or who was on an authorized leave of absence during that time period, who is represented by this Organization shall be deprived of employment or placed in a worse position with respect to compensation or working conditions for any reason except resignation, retirement, death or dismissal for justifiable cause. Failure to relocate shall not be considered as justifiable cause for loss of benefits under this Agreement. The formulae for the protective allowances, with a separation option, shall be comparable to those established in the *New York Dock* conditions.
2. If an employee is placed in a worse position with respect to compensation or working conditions, that employee shall receive, in addition to a make-whole-remedy, penalty pay equal to three times the lost pay, fringe benefits and consequential damages suffered by such employee.
3. P&LE agrees to obtain binding commitments from any purchaser of its rail line operating properties and assets to assume all collective bargaining agreements (including this Agreement) with, and obligations to P&LE employees who are represented by this Organization to hire P&LE employees in seniority order without physicals, and to negotiate with the P&LE and this Organization an agreement to apply this Agreement to the sale transaction and to select the forces to perform the work over the lines being acquired.
4. Any dispute or controversy over the application or interpretation of this Agreement shall be handled on the property in an expedited manner and may be referred by the employee or this Organization for adjustment in accordance with Section 3, Second of the

Railway Labor Act to a Special Board of Adjustment to be established by the Agreement.



## AMERICAN TRAIN DISPATCHER ASSOCIATION

August 27, 1987

Mr. Gordon E. Neuenschwander, President  
Pittsburgh & Lake Erie Railroad Company  
Commerce Court - 4 Station Square  
Pittsburgh, Pennsylvania 15219

Mr. James D. Peters  
Director-Labor Relations  
P&LE Railroad Company  
4 Station Square - Commerce Court, Suite 780  
Pittsburgh, Pennsylvania 15219-1199

Gentlemen:

In response to your notices to P&LE employees regarding the proposed sale of the P&LE's rail lines, operating properties and certain other assets, this Organization has advised you that it is our position that such a transaction cannot be effected without compliance with provisions of the Railway Labor Act regarding notice, negotiations and maintenance of the status quo pending completion of Railway Labor Act procedures. Additionally, we requested that you provide this Organization with information relating to this transaction.

The proposed sale will obviously affect the working conditions of P&LE employees so in the interest of expediting negotiations, but without prejudice to our position that P&LE had an obligation to serve its own Section 6 notice before entering any agreement for the sale of its rail line and other assets, please consider this letter a Section 6 notice; our proposals are contained in the attachment to this letter. This Organization intends to coordinate its bargaining in this manner with the other Organizations on the property and proposes that a meeting between P&LE and all of the Organizations be held on September 8, 1987;

at a mutually agreeable location in Pittsburgh, Pennsylvania.

You have proposed a meeting in early September "in the interests of keeping employees informed of plans for P&LE's future". We are amenable to such a meeting without prejudice to this Organization's position regarding P&LE's obligations under the Railway Labor Act, and suggest that such a meeting be held concurrent with the initial meeting we have proposed for negotiations regarding our proposals.

In order to facilitate our discussions we again request that, in advance of our meeting, you provide us with information regarding this transaction; including, but not limited to, contingencies which must yet be satisfied for the proposed sale to be completed, what filings will be made with the ICC, the expected date for consummation, anticipated effects on employees, the terms of the proposed sale, the process by which purchasers were solicited and the identity of any individual or entity who or which is providing financing for this transaction.

Sincerely your,

/s/ R. J. Irvin  
R. J. Irvin  
President

RJI:cc

Attachment

cc: Mr. W. A. Clifford  
Mr. J. J. O'Farrell

## ATTACHMENT

1. No employee of the P&LE Railroad Company who performed compensated service at any time between August 1, 1986 and August 1, 1987 or who was on an authorized leave of absence during that time period, who is represented by this organization shall be deprived of employment or placed in a worse position with respect to compensation or working conditions for any reason except resignation, retirement, death or dismissal for justifiable cause. Failure to relocate shall not be considered as justifiable cause for loss of benefits under this Agreement. The formulae for the protective allowances, with a separation option, shall be comparable to those established in the *New York Dock* conditions.
2. If an employee is placed in a worse position with respect to compensation or working conditions, that employee shall receive, in addition to a make-whole-remedy, penalty pay equal to three times the lost pay, fringe benefits and consequential damages suffered by such employee.
3. P&LE agrees to obtain binding commitments from any purchaser of its rail line operating properties and assets to assume all collective bargaining agreements (including this Agreement) with, and obligations to, P&LE employees who are represented by this Organization to hire P&LE employees in seniority order without physicals, and to negotiate with the P&LE and this Organization an agreement to apply this Agreement to the sale transaction and to select the forces to perform the work over the lines being acquired.
4. Any dispute or controversy over the application or interpretation of this Agreement shall be handled on the property in an expedited manner and may be referred by the employee or this Organization for ad-

justment in accordance with Section 3, Second of the Railway Labor Act to a Special Board of Adjustment to be established by the Agreement.

**SHEET METAL WORKERS' INTERNATIONAL  
ASSOCIATION**

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

August 27, 1987

Mr. Gordon E. Neuenschwander, President  
Pittsburgh & Lake Erie Railway Company  
Commerce Court  
4 Station Square  
Pittsburgh, Pennsylvania 15219

Dear Mr. Neuenschwander:

In response to your notices to P&LE employees regarding the proposed sale of the P&LE's rail lines, operating properties and certain other assets, this Organization has advised you that it is our position that such a transaction cannot be effected without compliance with provisions of the Railway Labor Act regarding notice, negotiations and maintenance of the status quo pending completion of Railway Labor Act procedures. Additionally, we requested that you provide this Organization with information relating to this transaction.

The proposed sale will obviously affect the working conditions of P&LE employees so in the interest of expediting negotiations, but without prejudice to our position that P&LE had an obligation to serve its own Section 6 notice before entering any agreement for the sale of its rail line and other assets, please consider this letter a Section 6 notice; our proposals are contained in the attachment to this letter. This Organization intends to coordinate its bargaining in this manner with the other Organizations on the property and proposes that a meeting between P&LE and all of the Organizations be held on September 8, 1987; at a mutually agreeable location in Pittsburgh, Pennsylvania.

August 27, 1987  
Page 2

You have proposed a meeting in early September "in the interests of keeping employees informed of plans for P&LE's future". We are amenable to such a meeting without prejudice to this Organization's position regarding P&LE's obligations under the Railway Labor Act, and suggest that such a meeting be held concurrent with the initial meeting we have proposed for negotiations regarding our proposals.

In order to facilitate our discussions we again request that, in advance of our meeting, you provide us with information regarding this transaction; including, but not limited to, contingencies which must yet be satisfied for the proposed sale to be completed, what filings will be made with the ICC, the expected date for consummation, anticipated effects on employees, the terms of the proposed sale, the process by which purchasers were solicited and the identity of any individual or entity who or which is providing financing for this transaction.

Sincerely yours,

/s/ Don C. Buchanan  
Don C. Buchanan  
Director of Railroad Workers

/s/ Audrey R. Hicks  
Audrey R. Hicks  
General Chairman

DCB/gt  
Attachment



## ATTACHMENT

1. No employee of the P&LE Railroad Company who performed compensated service at any time between August 1, 1986 and August 1, 1987 or who was on an authorized leave of absence during that time period, who is represented by this organization shall be deprived of employment or placed in a worse position with respect to compensation or working conditions for any reason except resignation, retirement, death or dismissal for justifiable cause. Failure to relocate shall not be considered as justifiable cause for loss of benefits under this Agreement. The formulae for the protective allowances, with a separation option, shall be comparable to those established in the *New York Dock* conditions.
2. If an employee is placed in a worse position with respect to compensation or working conditions, that employee shall receive, in addition to a make-whole-remedy, penalty pay equal to three times the lost pay, fringe benefits and consequential damages suffered by such employee.
3. P&LE agrees to obtain binding commitments from any purchaser of its rail line operating properties and assets to assume all collective bargaining agreements (including this Agreement) with, and obligations to, P&LE employees who are represented by this Organization to hire P&LE employees in seniority order without physicals, and to negotiate with the P&LE and this Organization an agreement to apply this Agreement to the sale transaction and to select the forces to perform the work over the lines being acquired.
4. Any dispute or controversy over the application or interpretation of this Agreement shall be handled on the property in an expedited manner and may be referred by the employee or this Organization for ad-

justment in accordance with Section 3, Second of the Railway Labor Act to a Special Board of Adjustment to be established by the Agreement.

**INTERNATIONAL BROTHERHOOD  
ELECTRICAL WORKERS**

CERTIFIED MAIL

August 28, 1987

P 681 174 375

RETURN RECEIPT REQUESTED

Mr. Gordon E. Neuenschwander, President  
Pittsburgh & Lake Erie Railway Company  
Commerce Court  
4 Station Square  
Pittsburgh, PA 15219

Dear Mr. Neuenschwander:

In response to your notices to P&LE employees regarding the proposed sale of the P&LE's rail lines, operating properties and certain other assets, this Organization has advised you that it is our position that such a transaction cannot be effected without compliance with provisions of the Railway Labor Act regarding notice, negotiations and maintenance of the status quo pending completion of Railway Labor Act procedures. Additionally, we requested that you provide this Organization with information relating to this transaction.

The proposed sale will obviously affect the working conditions of P&LE employees so in the interest of expediting negotiations, but without prejudice to our position that P&LE had an obligation to serve its own Section 6 notice before entering any agreement for the sale of its rail line or other assets, please consider this letter a Section 6 notice; our proposals are contained in the attachment to this letter. This Organization intends to coordinate its bargaining in this manner with the other Organizations on the property and proposes that a meeting between P&LE and all of the Organizations be held on September 8, 1987; at a mutually agreeable location in Pittsburgh, Pennsylvania.

You have proposed a meeting in early September "in the interests of keeping employees informed of plans for P&LE's future". We are amenable to such a meeting without prejudice to this Organization's position regarding P&LE's obligation under the Railway Labor Act, and suggest that such a meeting be held concurrent with the initial meeting we have proposed for negotiations regarding our proposals.

In order to facilitate our discussions we again request that, in advance of our meeting, you provide us with information regarding this transaction; including, but not limited to, contingencies which must yet be satisfied for the proposed sale to be completed, what filings will be made with the ICC, the expected date for consummation, anticipated effects on employees, the terms of the proposed sale, the process by which purchasers were solicited and the identity of any individual or entity who or which is providing financing for this transaction.

Sincerely,

/s/ Peter A. Puglia

Peter A. Puglia

General Chairman

System Council No. 7, IBEW

PAP:df

Enclosure

## ATTACHMENT

1. No employee of the P&LE Railroad Company who performed compensated service at any time between August 1, 1986 and August 1, 1987 or who was on an authorized leave of absence during that time period, who is represented by this organization shall be deprived of employment or placed in a worse position with respect to compensation or working conditions for any reason except resignation, retirement, death or dismissal for justifiable cause. Failure to relocate shall not be considered as justifiable cause for loss of benefits under this Agreement. The formulae for the protective allowances, with a separation option, shall be comparable to those established in the *New York Dock* conditions.
2. If an employee is placed in a worse position with respect to compensation or working conditions, that employee shall receive, in addition to a make-whole-remedy, penalty pay equal to three times the lost pay, fringe benefits and consequential damages suffered by such employee.
3. P&LE agrees to obtain binding commitments from any purchaser of its rail line operating properties and assets to assume all collective bargaining agreements (including this Agreement) with, and obligations to, P&LE employees who are represented by this Organization to hire P&LE employees in seniority order without physicals, and to negotiate with the P&LE and this Organization an agreement to apply this Agreement to the sale transaction and to select the forces to perform the work over the lines being acquired.
4. Any dispute or controversy over the application or interpretation of this Agreement shall be handled on the property in an expedited manner and may be referred by the employee or this Organization for adjustment in accordance with Section 3, Second of the

Railway Labor Act to a Special Board of Adjustment to be established by the Agreement.



**BROTHERHOOD OF RAILWAY, AIRLINE AND  
STEAMSHIP CLERKS**

File: 73.0 P&LE (1)

Subject: Sale of the P&LE Railroad/  
Section 6 Notice

August 31, 1987

**FEDERAL EXPREESS MAIL**

Mr. Gordon E. Neuenschwander, President  
Pittsburgh & Lake Erie Railway Company  
Commerce Court  
4 Station Square  
Pittsburgh, PA 15219

Dear Mr. Neuenschwander:

In response to your notice to P&LE employees regarding the proposed sale of the P&LE's rail lines, operating properties and certain other assets, this Organization has advised you that it is our position that such a transaction cannot be effected without compliance with provisions of the Railway Labor Act regarding notice, negotiations and maintenance of the status quo pending completion of Railway Labor Act procedures. Additionally, we requested that you provide this Organization with information relating to this transaction.

The proposed sale will obviously affect the working conditions of P&LE employees so in the interest of expediting negotiations, but without prejudice to our position that P&LE had an obligation to serve its own Section 6 notice before entering any agreement for the sale of its rail line and other assets, please consider this letter a Section 6 notice; our proposals are contained in the attachment to this letter. This Organization intends to coordinate its bargaining in this manner with the other Organization on the property and proposes that a meeting between P&LE and

all of the Organizations be held on September 8, 1987; at a mutually agreeable location in Pittsburgh, Pennsylvania.

You have proposed a meeting in early September "in the interests of keeping employees informed of plans for P&LE's future". We are amenable to such a meeting without prejudice to this Organization's position regarding P&LE's obligations under the Railway Labor Act, and suggest that such a meeting be held concurrent with the initial meeting we have proposed for negotiations regarding our proposals.

In order to facilitate our discussions we again request that, in advance of our meeting, you provide us with information regarding this transaction; including, but not limited to, contingencies which must yet be satisfied for the proposed sale to be completed, what filings will be made with the ICC, the expected date for consummation, anticipated effects on employees, the terms of the proposed sale, the process by which purchasers were solicited and the identity of any individual or entity who or which is providing financing for this transaction.

Very truly yours

/s/ R.A. Scardelletti  
Robert A. Scardelletti  
General Chairman

RAS/pg

Attachment

cc: R. I. Kilroy, IP  
M. M. Kraus, General Counsel  
W. G. Mahoney, Esquire  
N. W. Randolph, Jr., EVGC  
R. C. Yanssens, VGC  
P. A. Ranalli, DC  
J. F. Lint, LPC 1283

## ATTACHMENT

1. No employee of the P&LE Railroad Company who performed compensated service at any time between August 1, 1986 and August 1, 1987 or who was on an authorized leave of absence-during that time period, who is represented by this organization shall be deprived of employment or placed in a worse position with respect to compensation or working conditions for any reason except resignation, retirement, death or dismissal for justifiable cause. Failure to relocate shall not be considered as justifiable cause for loss of benefits under this Agreement. The formulae for the protective allowances, with a separation option, shall be comparable to those established in the *New York Dock* conditions.
2. If an employee is placed in a worse position with respect to compensation or working conditions, that employee shall receive, in addition to a make-whole-remedy, penalty pay equal to three times the lost pay, fringe benefits and consequential damages suffered by such employee.
3. P&LE agrees to obtain binding commitments from any purchaser of its rail line operating properties and assets to assume all collective bargaining agreements (including this Agreement) with, and obligations to, P&LE employees who are represented by this Organization to hire P&LE employees in seniority order without physicals, and to negotiate with the P&LE and this Organization an agreement to apply this Agreement to the sale transaction and to select the forces to perform the work over the lines being acquired.
4. Any dispute or controversy over the application or interpretation of this Agreement shall be handled on the property in an expedited manner and may be referred by the employee or this Organization for ad-

justment in accordance with Section 3, Second of the Railway Labor Act to a Special Board of Adjustment to be established by the Agreement.

INTERNATIONAL ASSOCIATION OF MACHINISTS  
AND AEROSPACE WORKERS  
District Twenty-Two

CERTIFIED MAIL

September 1, 1987

Mr. Gordon E. Neuenschwander, President  
Pittsburgh & Lake Erie Railway Company  
Commerce Court  
4 Station Square  
Pittsburgh, PA 15219

Dear Mr. Neuenschwander:

In response to your notices to Pittsburgh and Lake Erie Railway employees regarding the proposed sale of the P&LE's rail lines, operating properties, and certain other assets, this Organization has advised you that it is our position that such a transaction cannot be effected without compliance with provisions of the Railway Labor Act regarding notice, negotiations, and maintenance of the status quo pending completion of Railway Labor Act procedures. Additionally, we requested that you provide this Organization with information relating to this transaction.

The proposed sale will obviously affect the working conditions of P&LE employees so in the interest of expediting negotiations, but without prejudice to our position that P&LE had an obligation to serve its own Section 6 notice before entering any agreement for the sale of its rail line and other assets, please consider this letter a Section 6 notice; our proposals are contained in the attachment to this letter. This Organization intends to coordinate its bargaining in this manner with the other Organizations on the property and proposes that a meeting between P&LE and all of the Organizations be held on September 8, 1987, at a mutually agreeable location in Pittsburgh, Pennsylvania.

You have proposed a meeting in early September "in the interest of keeping employees informed of plans for P&LE's future." We are amenable to such a meeting without prejudice to this Organization's position regarding P&LE's obligations under the Railway Labor Act, and suggest that such a meeting be held concurrent with the initial meeting we have proposed for negotiations regarding our proposals.

In order to facilitate our discussions, we again request that in advance of our meeting, you provide us with information regarding this transaction, including, but not limited to, contingencies which must yet be satisfied for the proposed sale to be completed, what filings will be made with the ICC, the expected date for consummation, anticipated effects on employees, the terms of the proposed sale, the process by which purchasers were solicited and the identity of any individual or entity who or which is providing financing for this transaction.

Very truly yours,

/s/ Alex Sarcone  
Alex Sarcone,  
General Chairman

sq -  
Enclosure

cc: Messrs. J. E. Burns, Jr.,  
President, Dir. Gen. Chrmn.  
W. D. Snell,  
Asst. Pres. Dir. Gen. Chrman.  
R. J. McCarthy,  
Railroad Coordinator  
A. J. Takacs,  
Local Chairman LL-1161



## ATTACHMENT

1. No employee of the P&LE Railroad Company who performed compensated service at any time between August 1, 1986 and August 1, 1987 or who was on an authorized leave of absence during that time period, who is represented by this organization shall be deprived of employment or placed in a worse position with respect to compensation or working conditions for any reason except resignation, retirement, death or dismissal for justifiable cause. Failure to relocate shall not be considered as justifiable cause for loss of benefits under this Agreement. The formulae for the protective allowances, with a separation option, shall be comparable to those established in the *New York Dock* conditions.
2. If an employee is placed in a worse position with respect to compensation or working conditions, that employee shall receive, in addition to a make-whole-remedy, penalty pay equal to three times the lost pay, fringe benefits and consequential damages suffered by such employee.
3. P&LE agrees to obtain binding commitments from any purchaser of its rail line operating properties and assets to assume all collective bargaining agreements (including this Agreement) with, and obligations to, P&LE employees who are represented by this Organization to hire P&LE employees in seniority order without physicals, and to negotiate with the P&LE and this Organization an agreement to apply this Agreement to the sale transaction and to select the forces to perform the work over the lines being acquired.
4. Any dispute or controversy over the application or interpretation of this Agreement shall be handled on the property in an expedited manner and may be referred by the employee or this Organization for ad-

justment in accordance with Section 3, Second of the Railway Labor Act to a Special Board of Adjustment to be established by the Agreement.

**INTERNATIONAL BROTHERHOOD OF  
FIREMEN AND OILERS**

September 3, 1987

Mr. Gordon E. Neuenschwander, President  
Pittsburgh & Lake Erie Railway Company  
Commerce Court  
4 Station Square  
Pittsburgh, Pennsylvania 15219

Dear Mr. Neuenschwander:

In response to your notices to P&LE employees regarding the proposed sale of the P&LE's rail lines, operating properties and certain other assets, this Organization has advised you that it is our position that such a transaction cannot be effected without compliance with provisions of the Railway Labor Act regarding notice, negotiations and maintenance of the status quo pending completion of Railway Labor Act procedures. Additionally, we requested that you provide this Organization with information relating to this transaction.

The proposed sale will obviously affect the working conditions of P&LE employees so in the interest of expediting negotiations, but without prejudice to our position that P&LE had an obligation to serve its own Section 6 notice before entering any agreement for the sale of its rail line and other assets, please consider this letter a Section 6 notice; our proposals are contained in the attachment to this letter. This Organization intends to coordinate its bargaining in this manner with the other Organizations on the property and proposes that a meeting between P&LE and all of the Organizations be held on September 8, 1987; at a mutually agreeable location in Pittsburgh, Pennsylvania.

You have proposed a meeting in early September "in the interests of keeping employees informed of plans for

P&LE's future". We are amenable to such a meeting without prejudice to this Organization's position regarding P&LE's obligations under the Railway Labor Act, and suggest that such a meeting be held concurrent with the initial meeting we have proposed for negotiations regarding our proposals.

In order to facilitate our discussions we again request that, in advance of our meeting, you provide us with information regarding this transaction; including, but not limited to, contingencies which must yet be satisfied for the proposed sale to be completed, what filings will be made with the ICC, the expected date for consummation, anticipated effects on employees, the terms of the proposed sale, the process by which purchasers were solicited and the identity of any individual or entity who or which is providing financing for this transaction.

Sincerely,

/s/ G. J. Francisco, Jr.  
G. J. Francisco, Jr.  
General Chairman and  
International Vice President

GJFJr/ab  
Attachment

CERTIFIED MAIL NO. P 094 506 928  
RETURN RECEIPT REQUESTED

## ATTACHMENT

1. No employee of the P&LE Railroad Company who performed compensated service at any time between August 1, 1986 and August 1, 1987 or who was on an authorized leave of absence during that time period, who is represented by this organization shall be deprived of employment or placed in a worse position with respect to compensation or working conditions for any reason except resignation, retirement, death or dismissal for justifiable cause. Failure to relocate shall not be considered as justifiable cause for loss of benefits under this Agreement. The formulae for the protective allowances, with a separation option, shall be comparable to those established in the *New York Dock* conditions.
2. If an employee is placed in a worse position with respect to compensation or working conditions, that employee shall receive, in addition to a make-whole-remedy, penalty pay equal to three times the lost pay, fringe benefits and consequential damages suffered by such employee.
3. P&LE agrees to obtain binding commitments from any purchaser of its rail line operating properties and assets to assume all collective bargaining agreements (including this Agreement) with, and obligations to, P&LE employees who are represented by this Organization to hire P&LE employees in seniority order without physicals, and to negotiate with the P&LE and this Organization an agreement to apply this Agreement to the sale transaction and to select the forces to perform the work over the lines being acquired.
4. Any dispute or controversy over the application or interpretation of this Agreement shall be handled on the property in an expedited manner and may be referred by the employee or this Organization for adjustment in accordance with Section 3, Second of the

Railway Labor Act to a Special Board of Adjustment to be established by the Agreement.



IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 87-1745

RAILWAY LABOR EXECUTIVES' ASSOCIATION,  
*Plaintiff,*

v

PITTSBURGH & LAKE ERIE RAILROAD CO.,  
*Defendant.*

DECLARATION OF ROBERT A. SCARDELLETTI

ROBERT A. SCARDELLETTI, deposes and states under penalty of perjury, pursuant to 28 United States Code, Section 1746, that the following is true and correct:

1. Declarant is, and has been since September 1, 1987, a Vice President of the Transportation Communications International Union (TCU), which was formerly the Brotherhood of Railway and Airline Clerks (BRAC). Also, Declarant has been, since May 24, 1984, BRAC's General Chairman, with the responsibility to handle the day to day representation matters of employees of the Pittsburgh and Lake Erie Railroad, (hereinafter "P&LE"), as well as other railroads in the Eastern portion of this country. In the course of performing his duties, Declarant sent and received documents, true and accurate copies of which are attached hereto.
2. The documents which Declarant authenticates are as follows:
  - (a) Cover letter from P&LE Labor Relations to Declarant attaching the July 31, 1987

letter from the P&LE's President to all P&LE employees;

- (b) August 7, 1987 letter by Declarant to P&LE's President;
- (c) August 10, 1987 response of P&LE's President to letter (b);
- (d) August 17, 1987 letter to Declarant from P&LE's President in further response to letter (b);
- (e) Section 6 Notice by BRAC to P&LE, dated August 31, 1987;
- (f) Letter dated September 1, 1987 by P&LE in response to Section 6 Notice; and
- (g) Telegram from Declarant to P&LE President sent September 4, 1987, to which no response has been received.

I DECLARE UNDER PENALTY OF PERJURY THAT  
THE FOREGOING IS TRUE AND CORRECT.

Executed on this 16th day of September, 1987.

/s/ Robert A. Scardelletti  
Robert A. Scardelletti

**THE PITTSBURGH & LAKE ERIE  
RAILROAD COMPANY**

July 30, 1987

Mr. R. A. Scardelletti, General Chairman  
Brotherhood of Railway, Airline & Steamship Clerks,  
Freight Handlers, Express & Station Employees  
1522 Locust Street  
Philadelphia, PA 19102

Dear Mr. Scardelletti:

This office has received numerous inquiries concerning the possible sale of the P&LE, and, as you are aware, there have been several newspaper and television items on the subject. We can now advise you that an agreement has been reached with a subsidiary of Chicago West Pullman Transportation Corporation which will result in their purchase of all of the P&LE's rail lines and operating properties, providing all of the contingencies upon which the agreement is premised are satisfied.

Enclosed is a copy of Mr. Neuenschwander's letter which will be mailed to all employees on July 31, 1987.

You will be provided with additional information concerning the transaction as it develops.

We recognize and appreciate the cooperation that you gentlemen and your constituents have displayed, but in spite of these meaningful efforts we are still faced with continued operating losses and increasing financial pressures. After very serious consideration by top management, it was decided that the proposed sale provided the best solution to the dilemma.

Yours very truly,

/s/ James D. Peters

**BROTHERHOOD OF RAILWAY,  
AIRLINE AND STEAMSHIP CLERKS**

File: 10 P&LE (1)

Subject: Sale of the P&LE Railroad  
August 7, 1987

**FEDERAL EXPRESS MAIL**

Mr. Gordon E. Neuenschwander  
President  
Pittsburgh & Lake Erie Railway Company  
Commerce Court  
4 Station Square  
Pittsburgh, PA 15219

Dear Mr. Neuenschwander:

You have advised Pittsburgh & Lake Erie employees that P&LE intends to sell its rail lines, operating properties, and much of its other assets to a subsidiary of the Chicago West Pullman Transportation Corporation, providing that certain contingencies are satisfied. You have not identified the name of the Chicago West Pullman subsidiary involved. Nor have you provided either the employees of this organization with any information regarding the contingencies which must be satisfied, an expected date for consummation, or anticipated effects upon employees.

Obviously, such a change in ownership will have a significant impact on the working conditions of the P&LE employees represented by this organization, however, to date this organization has not received a Section 6 notice under the Railway Labor Act regarding this transaction. It is the position of this organization that any consummation of this transaction without negotiations pursuant to the Railway Labor Act will be a violation of that statute. In that regard, this organization is prepared to meet with the P&LE to negotiate concerning all aspects of this mat-

ter including, but not limited to, the decision to sell the rail lines and other assets of the P&LE and the effects of such a transaction on P&LE's employees who are represented by this organization. Additionally, we request that you furnish this organization with all information available regarding this transaction including, but not limited to, the contingencies which must yet be satisfied, what filings will be made with the ICC, the expected date for consummation, and anticipated effects on employees.

This matter is of utmost urgency, and we would expect your reply within 72 hours of receipt of this letter.

Very truly yours,

/s/ Robert A. Scardelletti  
Robert A. Scardelletti  
General Chairman

RAS/pg

**THE PITTSBURGH & LAKE ERIE  
RAILROAD COMPANY**

August 10, 1987

Robert A. Scardelletti  
General Chairman  
Brotherhood of Railway, Airline and  
Steamship Clerks  
1522 Locust Street  
Philadelphia, Penna. 19102

Dear Sir:

With reference to your communication of August 7, 1987 suggesting a meeting to discuss the sale of P&LE lines, we have your suggestion under consideration and will respond within a week.

Sincerely yours,

/s/ Gordon E. Neuenschwander  
Gordon E. Neuenschwander



**THE PITTSBURGH & LAKE ERIE  
RAILROAD COMPANY**

August 17, 1987

Mr. R. A. Scardelletti, General Chairman  
Brotherhood of Railway, Airline &  
Steamship Clerks, Freight Handlers,  
Express & Station Employes  
1522 Locust Street  
Philadelphia, PA 19102

Dear Mr. Scardelletti:

In response to your August 7, 1987 letter, in which you suggested that we meet to discuss the anticipated sale of Pittsburgh & Lake Erie rail lines and its effects on employees represented by your organization, please be advised that the P&LE is prepared to meet with you in early September with regard to this matter, and will advise you of the precise time and location as soon as the arrangements are complete.

We propose this meeting in the interests of keeping employees informed of plans for the P&LE's future, without prejudice to our position that "Section 6" bargaining under the Railway Labor Act is not necessary or appropriate in this instance. Your letter does not constitute a Section 6 notice, nor should this response be viewed as an agreement to confer pursuant to that section of the statute. The anticipated transaction is controlled by the Interstate Commerce Act and is subject to the authority of the Interstate Commerce Commission. Section 6 bargaining, in the railroad's view, would usurp the ICC's authority over the transaction and management's prerogative to conduct the railroad's business as it sees fit.

With regard to your information requests, I expect that to the extent possible at present, your questions will be answered at our meeting.

Sincerely,

/s/ Gordon E. Neuenschwander  
Gordon E. Neuenschwander

**THE PITTSBURGH & LAKE  
ERIE RAILROAD COMPANY**

September 1, 1987

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Mr. R. A. Scardelletti, General Chairman  
Brotherhood of Railway, Airline &  
Steamship Clerks, Freight Handlers,  
Express & Station Employees  
1522 Locust Street  
Philadelphia, PA 19102

Dear Mr. Scardelletti:

This will acknowledge receipt of your August 31, 1987 letter received in this office on September 1, 1987 which you advise is a formal notice served under Section 6 of the Railway Labor Act, as amended, to negotiate an agreement in line with the proposals contained in the Attachment to your letter.

It is the position of this Carrier that your notice is not a valid notice under Section 6 of the Railway Labor Act since the proposed transaction is controlled by the Interstate Commerce Act and is subject to the authority of the Interstate Commerce Commission. It is our position that Section 6 bargaining of this matter would usurp the ICC's authority over the transaction as well as management's prerogative to conduct the Carrier's business as it sees fit.

It is the further position of this Carrier that your notice is directly related to employee protection and is therefore barred under the moratorium provisions contained in Article XI of Mediation Agreement Case No. A-11616 dated January 14, 1986.

Without prejudice to or waiver of our position, as stated above, we have no objection to meeting jointly with you

and the other organization representatives at a location in Pittsburgh. Although we are unable to coordinate our schedules for a meeting on September 8, 1987 as suggested by you, we suggest an alternate date of September 25, 1987 at a location to be named later. Please advise whether this date is agreeable with you.

The information requested in the last paragraph of your letter is not available at this time but will be discussed at the meeting.

Sincerely,

/s/ Gordon E. Neuenschwander  
Gordon E. Neuenschwander

## WESTERN UNION MAILGRAM

BROTHERHOOD OF RAILWAY AND  
AIRLINE CLERKS  
GRILLO

1522 Locust Street  
Philadelphia PA 19102

This is a confirmation copy of the following message:

2157327410 FRB TDMT Philadelphia PA 103 09-04 0226P  
Est

PMS Mr. Gordon E. Neuenschwander, DLR  
President

Pittsburgh and Lake Erie Railway Company RPT DLY  
MGM, DLR

Commerce Court  
4 Station Square  
Pittsburgh PA 15219

This will acknowledge receipt of your September 1, 1987 letter received in this office on September 4, 1987 wherein you advised that your schedule will not permit you to meet with us on September 8, 1987 and your suggestion of an alternate date of September 25, 1987.

We would advise that your suggested date of September 25, 1987 is too late and we would request to meet earlier as soon as possible after September 8, 1987. We would request that upon receipt of this telegram, you immediately contact us with a date for this meeting which is acceptable to us.

Very Truly Yours,

Robert A. Scardelletti—  
1522 Locust Street  
Philadelphia, PA 19102

14:26 EST  
MGMCOMP

EXCERPTS FROM TRANSCRIPT  
OF PROCEEDINGS ON DEFENDANT'S MOTION  
FOR TEMPORARY RESTRAINING ORDER  
[TESTIMONY OF GORDON E. NEUENSCHWANDER]

[3] DIRECT EXAMINATION  
BY MR. WYATT:

Q. Mr. Neuenschwander, I know you were sitting in the court room and you heard his Honor questions, but could you give us an answer to the question of where the sale transaction stands at this point in time?

A. The sale transaction, your Honor—

THE COURT: Let us have his name—

MR. WYATT: I am sorry.

THE COURT: (continuing)— and address.

MR. WYATT: I am sorry. Yes.

THE COURT: We ought to know something about him. He is a good-looking man, but that doesn't say he is going to be a competent witness. I am sure—

MR. WYATT: Certainly, your Honor.

THE COURT: (continuing)—you will let us know he will be.

BY MR. WYATT:

Q. State your name for the record.

A. I am Gordon E. Neuenschwander. I am the Chief Executive Officer and President of the Pittsburgh & Lake Erie Railroad Company.

[4] Q. Mr. Neuenschwander, where do you reside?

A. I reside in Allegheny County in the Wexford area.

Q. As Chief Executive Officer of the Pittsburgh & Lake Erie Railroad Company, have you been involved in negotiations for the sale of the assets of the company?



A. Yes, I have.

Q. And has the company found a purchaser?

A. We have found a purchaser and have entered into an agreement. That was back on July 8th. And the agreement calls for the sale of a major portion of the assets which comprise, really the operating assets and franchises of the Pittsburgh & Lake Erie Railroad Company to P&LE Railco, Inc., which is a subsidiary of Chicago West Pullman Transportation Company.

THE COURT: That is another railroad company?

THE WITNESS: The subsidiary that we have the agreement with, your Honor, is not a railway company. It is a newly formed corporation which has never been in business. Its first transaction is the contract to acquire these assets. It is a part of a holding company which does have among its businesses, I think, three or four smaller rail operations at points in the country other than around here. The closest would be in the Cleveland area. Mostly around Chicago.

THE COURT: What would the proposed purchaser contemplate doing with the bulk of the railway as you say that you would like to sell?

[5] THE WITNESS: Their intention, as I understand it, is to fully operate the assets, which would be conveyed to the new company, as a railroad and maintain the same standard of service with much of the same equipment (the locomotives), as the current P&LE Railroad does today.

THE COURT: And continue on in the same way as the P&LE is doing now?

THE WITNESS: That's correct. Serving the same identical customers in Western Pennsylvania and Eastern Ohio, and even Northern West Virginia, that the P&LE does today, that's correct, sir.

THE COURT: Passenger service?

THE WITNESS: No passenger service. That was discontinued about a year and a half ago.

THE COURT: All right.

BY MR. WYATT:

Q. Mr. Neuenschwander, at this point, you testified, you have signed a sales agreement?

A. Correct.

Q. Is the sales agreement contingent upon approval by any regulatory agency?

A. The agreement would never go to a closing and the assets would never be sold without a filing and the procedures under that filing with the Interstate Commerce Commission. That is the agreement's specific language, and the parties fully con- [6] template that a transaction of this kind by its very nature could not succeed, could never be consummated, without the filing with the Interstate Commerce Commission under provisions of the Interstate Commerce Act.

THE COURT: Has any proceedings been begun or initiated—

THE WITNESS: Your Honor, no—

THE COURT: (continuing)—to—

THE WITNESS: I'm sorry.

THE COURT: Go ahead. You know more than I do.

THE WITNESS: (continuing)—No, there has been—there has been no proceedings instigated before that Commission. However, there is to be a filing in the very near future. I do not control the timing of that. That's the buyer's prerogative on the date. The agreement for the sale of the assets, however, does contemplate a target date for trying to complete the transaction and the filing would certainly have to precede that. But the filing has not yet

been made. But it's my understanding that it would be made in the very near future. A matter of days.

\* \* \* \*

[9] BY MR. WYATT:

Q. Mr. Neuenschwander, I have a couple of additional questions for the record.

Could you tell us the current financial condition of the Pittsburgh & Lake Erie Railroad?

A. Pittsburgh & Lake Erie, as I have indicated in my affidavit, has had a singularly disastrous spell of financial experience in the last five years with the decline in business, the heavy industry in this area, to which we are tied simply by geography. We have lost, really, 60 million dollars. We have, just prior to that time, had the ill-fortune of buying an awful lot of freight cars on credit in about 1980 and '81 when business was doing very, very well. Then along came deregulation, which changed the rules under which railroads operate, favoring long lines, that is, the major railroads, and hurting the little railroads.

And, also, our business sector here, the older mills and what have you, in Pittsburgh have really caused a tremendous, severe decline in the fortunes of the P&LE Railroad. Now, that's—that's just—you say it's on paper, it's dollars. But in real human terms, it has meant a lot of people have lost their jobs. Management on the railroad, to start with, has reduced about 150 per cent. Let's say we had 250 to 280 people around 1980, '81. Now, we're below 100 people in that category; those people who are in the administrative and [10] executive positions who do not operate under labor agreements.

As far as the union group is concerned, they, too, have suffered in that area and been furloughed. And there really no prospect that those people would ever be called back. So, we're down now to a labor force that together with

the less than 100 people amounts to about an average of 750 people that are employed. Normally—that was up until yesterday. Today, we have less than a hundred there. Those people who—who are not subject to labor agreements are still trying to do what they can to keep the lights on, to serve some customers. But we just are not able to do it.

We're losing, roughly, in our situation this year, I think, alone, operating wise, close to about seven million dollars. Seven million dollars. We owe a tremendous amount of debt to banks (some in Pittsburgh), insurance companies and public employee pension funds, who have advanced money to buy railroad equipment—not extraneous assets but good, hard railroad equipment. And we're just not able to pay them. The business isn't here, our costs are too high. And, frankly, we're in a squeeze to the extent where this transaction is the last hope that I think we have of paying part—not all—part of the debt back to these people who have advanced their monies to us. They've been patient with me and with other managers of the P&LE—

THE COURT: You're a nice fellow.

[11] THE WITNESS: How is that? No. No. They—

THE COURT: Well, all right then. Under these circumstances, failure of this deal results in what alternatives?

THE WITNESS: I will answer you directly—but I told this to Senators Spector and Heinz the other day—that if this deal does not go through, all of the employees of the P&LE are subject to termination because there will be no railroad to operate. We just cannot continue on. And the creditors will demand payment on the assets which they have had a lien on—a mortgage on for years.

THE COURT: Well, you just can't stop operation, can you?

THE WITNESS: We would have to file an abandonment proceeding either by a trustee doing it in a bankruptcy



proceeding or voluntarily filing the abandonment, in which case we would be relieved of the obligations.

THE COURT: Would you do that, voluntarily abandon, or would you have to go into bankruptcy?

THE WITNESS: You can do it either way. Probably more quickly would be done in a bankruptcy proceeding with a trustee making a quick determination that there really is no opportunity any longer under operating with current conditions with our labor force that we could ever repay the debt to the people who to, you know, that money is owed.

And then there's the question of balancing the [12] public interest, and we are concerned with that. And even our creditors are very concerned with that. We have important industries here who rely upon the P&LE. You say why? Because if they don't have the P&LE, there's no competitive pricing discipline left. I don't want to point any fingers, but there will only be one railroad that will be handling that coal, or product, for many of these companies.

The P&LE, at least, serves a very strong public mission in running its trains and offering and quoting competitive contract rates, which we are permitted to do. The problem is we just don't get enough business any more. The trucks have moved in and the long lines have hurt us. We're in a box. We're in a box. It's as simple as that.

THE COURT: All right. Go ahead, sir.

BY MR. WYATT:

Q. One last question. The current work stoppage, Mr. Neuenschwander, does that have an effect on the shippers, the shippers that currently use the P&LE?

A. It certainly does. Today—we normally operate about five trains a day. Let's say we have, maybe, four, five-hundred carloads of freight. Obviously, we move a lot of

empties to get those carloads. And today, we're—we're barely struggling to get one train operating. I mean if this continues, it's just going to back up and back up. And we think it will have a damaging effect on industries who aren't getting their [13] product in or not getting it out. And, in turn, that could have a ripple effect certainly with the employment in those places. It's up to them how much stockpile they have.

But, certainly, I can foresee—and I think it's my duty to try to get this railroad running again, because we have a contract to run it.

MR. WYATT: I have no further questions of Mr. Neuenschwander.

THE COURT: Cross-examine?

MR. CLARKE: Yes, your Honor. I have a few.

May I proceed, your Honor?

THE COURT: You may.

#### CROSS-EXAMINATION

BY MR. CLARKE:

Q. Mr. Neuenschwander, let's go back to a couple of questions, or a couple of statements that you made dealing with what would happen if the deal did not go forward, the deal with the Chicago West Pullman.

You indicated that the end result would be a termination of operations and a termination of employment for all 750 of your current employees; is that correct?

A. That's correct, that is what I said.

Q. Now, you also indicated that you now have insufficient assets available to pay all of your outstanding debts. Is that what you said?

[14] A. No, I did not say that—if I had to sell all the assets tomorrow, dump it on the market without a sched-



uled time frame to sell assets over a period of time, the principles of sales would apply and there would be a heavy discount and we would not have enough to pay off the debt. It might take as much as seven years to piecemeal sell off these assets as markets right and fall. Scrap prices go up, they go down. You can't sell on a low market and pay your debt back.

So that would be a—really a liquidating function much like Penn Central had after they sold Conrail off.

Q. All right. Now, let's go back to my question. I asked you whether or not at the present time you had less assets than you do debts. Just yes or no.

A. I think it's about even. I would say we could barely scratch out and come out fairly even.

Q. All right.

A. (continuing)—But the—

Q. You've already answered. Is that correct?

A. Correct. That's today.

Q. All right.

A. (continuing)—A year from now with our operations, it won't work. It will be below.

MR. CLARKE: Your Honor, I'd ask that the response be stricken. That is not what I asked.

THE COURT: He was responding. I would like to [15] hear what he says because I want to know what he is saying.

MR. CLARKE: Yes.

THE COURT: Go ahead, sir.

MR. CLARKE: All right.

BY MR. CLARKE:

Q. As a result of this sale, you are receiving 75 million dollars in cash from the West Pullman system, are you not?

A. No.

Q. How much are you receiving in cash?

A. It's a lesser amount. It is closer to 70 million. But it's not 75.

Q. Now, after the sale, what assets will be left in the Pittsburgh & Lake Erie?

A. There will be some non-operating real estate—a small amount at such interesting places as Connellsville, and what have you (not a heck of a lot of market value there)—and a few pieces here and there around New Castle. I will be honest and say it's worth, maybe, about 2 million spread over three, four years to dispose of that. There will also be railroad cars.

Q. How many railroad cars?

A. There will be about 6,000 railroad cars remaining.

\* \* \* \*

[21] Q. Now, over the years of your—this financial problem that you have suddenly didn't arise today, did it?

A. No. Its been with us for about four years.

Q. And the employees and you have tried to work out arrangements whereby you can keep the railroad afloat, have you not?

A. There have been efforts to that effect. And to the extent that they were successful, we—no question they were helpful.

Q. So, your answer is yes; is that correct?

A. Up to two years ago I would say they were helpful. But then events overtook it.

Q. One of the reliefs that they gave you was to cut back in one craft from five to four days?

A. That's correct.

Q. Other crafts took wage cuts?

A. Correct.

Q. Now, partly as a result of some of those concessions, the P&LE made an arrangement with these crafts that they would—for instance in the one that took the four-day cut, they had a lifetime protection agreement, didn't they? They were guarant [22] eed a job?

A. Yes, they did. They—they had a, for many years, lifetime guarantee with the Pittsburgh & Lake Erie which was an outgrowth of the Penn Central days.

Q. All right. The organization that took the 12 per cent pay cut, what used to be known as the Brotherhood of Railway And Airline Clerks—is that the organization that took the 12 per cent wage cut?

A. They certainly did, yes.

Q. They have a lifetime agreement, a job security agreement, with the P&LE, don't they?

A. With certain people who have that kind of seniority date there are those people that would have that kind of an agreement, yes.

\* \* \* \*

[23] Q. Did you participate in the sale negotiations with the Chicago West Pullman?

A. Yes, I did.

Q. Did you make any effort at all to guarantee the employment of all of the people who are working for you today?

A. Not in that contract. Certainly not, no.

Q. Did you seek to negotiate with them any provisions in the contract that would deal with employees and how they would be protected?

A. Just—the obvious answer is no. I'm just wondering if there might have been a provision or two that had to do with employee records, personnel records and things of that kind. But the answer to your question generally is no, we did not bargain their position away.

Q. Let me try to back up and ask you this. This is really what I'm asking you. You might not have understood my question.

A. Right.

Q. Did you in your negotiations with the Chicago West Pullman attempt to negotiate any provisions that would protect the people or deal with the continued employment of the people who were working for you?

[24] A. Not as a matter of negotiation. We did discuss with them some of their ideas as to what they might do in relation to people that would be adversely affected by the transaction, Mr. Clarke, but it was not made a part of the hard and fast agreement. With the understanding that the matter would be filed with the ICC and people generally try to protect their rights.

Q. Now, whey don't we go just a little bit forward, then we'll come back to this in a second. Your understanding was this transaction would be filed with the ICC?

A. Correct.

Q. Is that correct?

A. Correct.

Q. And this transaction—or it would be subject to ICC approval or exemption; is that correct?

A. Correct.

Q. And it was being framed and phrased in a way that would be considered as a sale of an existing rail line to a newly formed rail carrier?

A. Correct.

\* \* \* \*

[25] Q. So that to avoid the employee protection, this transaction [26] was structured as a sale to a newly formed rail carrier, was it not?

A. It was done in that fashion, Mr. Clarke, because it's the only way in which the owners of the P&LE Railroad, the assets being sold, could get any value. We attempted to sell this property and the rail lines to other major carriers that are well known in this industry; the Norfolk Southern, CSX. They would have no parts of it because of the extremely high cost of labor protection. There doesn't begin to be enough business to begin to justify the assumption of full labor ICC protection. It would have cost about 70 million dollars.

\* \* \* \*

[35] Q. Mr. Neuenschwander, you do remember being requested by rail labor shortly after the letter to the employees in July, the end of July, to negotiate about the sale and about the impact of that sale on employees; is that correct?

A. I'm not so sure. I would have to read it again to see whether they asked to negotiate or discuss it.

Q. Is there a difference in your mind between negotiations and discussions?

A. In my mind, generally, if someone says they're negotiating, they're coming from a position of having a right to have me, under a provision of the law, to sit down and discuss a specific specific subject.

In the context of the Railway Labor Act, negotiation is a session set up to get on with some change, by either party, of an arrangement they already have by way of a contract.

And I—I looked at that as an opportunity to sit down and discuss the situation with them.

Q. But not negotiate?

A. But not negotiate, that's right.

Q. Now—

A. (continuing)—I would have to read the letter again, but that's the way I interpreted it.

Q. Now, the first request from the union did inform you that [36] in the union's position you had an obligation to send them a Section 6 Notice to negotiate before you sold; isn't that correct?

A. Yeah. And we were a little perplexed by the arrangement of that letter. That is the way I—we read it.

Q. Subsequently, you received Section 6 notices from virtually all of the 14 organizations that represent employees on your property; isn't that correct?

A. That's correct. They clarified their position. And I think it came right out and said this should be understood to be a Section 6 Notice.

Q. And those notices requested that you negotiate not only about the sale but also about the impact of the sale on the employees?

A. That was the request, yes.

Q. And your position, you and your company's position—

A. Correct.

Q. (continuing)—is that you have no obligation to negotiate with the employees over the sale; isn't that correct?

A. That's correct. As stated by our counsel here today.

Q. And it is also your position that you have no obligation to negotiate, as compared to discuss with the employees,



to negotiate with the employees about the impact of this sale on their employment, the terms and conditions of their employment? Isn't that correct?

[37] A. That's correct.

Q. Now, you have said that you're willing to meet with the employees on the 25th of September; is that correct?

A. (The witness nods his head affirmatively).

Q. Your company is willing to meet with them on the 25th?

A. That's right. And I repeat that now.

Q. And that meeting is simply to discuss with them what's going to happen as a result of this sale; isn't that correct?

A. As best we know it and as best as I can speak from the standpoint of their current employer.

Q. But you are not going to bargain with the employees?

A. That's correct.

Q. And the meeting on the 25th is not to bargain; isn't that correct?

A. It's an informational meeting only that we suggested, without prejudice to our position that we have no obligation to bargain that position.

Q. And you have no obligation to bargain before you go ahead and sell?

A. That's correct.

Q. Now, as far as the sale is concerned, you are aware, are you not, that the employees on the P&LE have received a letter from the Chicago West Pullman Company advising them of the sale and requesting various employment applications?

A. I am not aware that every last employee got it. I even [38] got one.

Q. Who gave them the names and addresses of the employees?

A. I—I can't even tell you that. They didn't ask—they they came to the railroad. They have asked by virtue of the contract to have access to the names and addresses and we agreed that we would do that.

Q. And the personnel files?

A. We have not agreed to turn the personnel files over to Chicago West Pullman. I think they have a right to inspect than but not—not to keep them.

Q. And this is something that was one of the items of your negotiation?

A. That's correct.

Q. Did you negotiate a priority-of-employment right for people who worked on the P&LE with the new company?

A. That was not negotiated, but they have told us that—very clearly—that they intended to—to adhere to that policy to give the P&LE employees the first opportunity. They are the ones who are experienced in that operation.

MR. CLARKE: I have no further questions, your Honor.

\* \* \* \*

## ATTACHMENT C

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

C. A. No. 87-1745  
Judge Bloch

RAILWAY LABOR EXECUTIVES' ASSOCIATION,  
*Plaintiff,*

v.

PITTSBURGH AND LAKE ERIE RAILROAD COMPANY,  
*Defendant.*

FIRST SUPPLEMENTAL AFFIDAVIT OF GORDON E.  
NEUENSCHWANDER

I, Gordon E. Neuenschwander, being duly sworn on oath, depose and state as follows:

1. This affidavit supplements my affidavit of September 16, 1987.

2. On September 17, 1987 and September 18, 1987, I notified Chicago West Pullman Corporation ("CWP") and the creditors' representatives of the Joint Stipulation and Agreement entered into between RLEA and P&LE dated September 17, 1987 and the terms thereof. I requested that CWP attend the meeting scheduled pursuant to the Agreement, and further asked CWP not to file with the Interstate Commerce Commission any applications related to the acquisition of P&LE's assets on or before September 20, 1987, and to agree to an extension of time for closing the sale of P&LE's assets and not to close until October 10, 1987. As to the creditors, I requested their

representatives to agree to an extension of time for closing the sale of P&LE assets until October 10, 1987. Upon my direction, after advice from CWP and the creditors' representatives that such an extension was not agreeable, notice was given on September 19, 1987, at 4:00 p.m. E.S.T., to the designated representatives of RLEA that P&LE had not obtained the required consent to extend the closing of the sale until October 10, 1987.

3. I am advised by my officers that P&LE's employees who are members of our striking unions resumed their picketing within the hour on September 19, 1987 of being informed the consent was not obtained. Additionally, I am further advised by my officers that picketing by RLEA's member unions has not extended to the railroad subsidiaries of the purchaser, CWP.

4. The effect of the resumed strike on P&LE is greater than that described in my previous affidavit, because P&LE's railroad operations are virtually shut down.

5. After the sale to CWP, P&LE will continue to exist, though not as a rail carrier. Its assets will consist largely of non-railroad real estate holdings and some 6000 railcars which it will continue to lease or sell to shippers and carriers. It is my intention to satisfy all debt obligations remaining after the sale to CWP with the net proceeds that can be obtained from the sale and lease of the remaining properties of the surviving company. I will direct the activities of the surviving company.

/s/ Gordon E. Neuenschwander  
Gordon E. Neuenschwander

Sworn to and subscribed before me, a Notary Public in and for the County of Allegheny, PA., this 21st day of September, 1987.

/s/ John D. Hartman  
Notary Public

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 87-1745

RAILWAY LABOR EXECUTIVES' ASSOCIATION,  
*Plaintiff,*

v.

PITTSBURGH AND LAKE ERIE RAILROAD COMPANY  
*Defendant.*

FIRST SUPPLEMENTAL AFFIDAVIT OF JAMES D.  
PETERS

I, James D. Peters, being duly sworn on oath, depose and state as follows:

1. I am Director, Labor Relations, for The Pittsburgh and Lake Erie Railroad Company ("P&LE").
2. On Friday, September 18, 1987, pursuant to the Joint Stipulation and Agreement, I met with 26 officials representing all of P&LE's labor organizations, except the International Brotherhood of Firemen and Oilers. The meeting was held at the Redwood Days Inn Motel on Banksville Road, Pittsburgh, Pennsylvania from 1:30 P.M. until approximately 4:15 P.M.
2. During the discussion, the labor representatives asked if the P&LE would be willing to sit down and attempt to work out an employee stock ownership plan (ESOP) in lieu of selling the Company. I told the representatives that P&LE had a binding sales agreement with Chicago West Pullman Transportation Corporation ("CWP") and that perhaps an ESOP plan should more appropriately be discussed with CWP.

3. The representatives stated that they did not desire to discuss an ESOP plan with CWP but rather with P&LE. I advised them that, if they presented an ESOP plan we would take a look at it, but such a plan would have to include a provision to indemnify P&LE from any liability for breach of the sales agreement with CWP. I also pointed out that we were maintaining our position that we had no obligation to bargain the sale of P&LE's assets nor its effects, but were willing to look at such a plan without prejudice to that position.

4. The representatives also asked what it would take in reduced expenses and/or increased revenues to keep the company intact and prevent its sale. I told them that I did not have that specific dollar figure but I would attempt to have it for them for the September 19th meeting.

5. The meeting reconvened at approximately 10:00 A.M. on Saturday, September 19, 1987 at the Greentree Holiday Inn in Pittsburgh, Pa. There were 29 officials in attendance representing all of P&LE's labor organizations.

6. I advised the representatives that the bottom line number as discussed at yesterday's meeting had been calculated to be a minimum of \$15 million per year. This was disregarding the fact that we had a binding sales agreement and did not include any liability for breach of that agreement. I further advised the representatives that this number could be any combination of reduced number of jobs, wages, other expenses or increased net revenue. It was the bottom line number that was required to make the P&LE a viable company.

7. The representatives advised that a formal ESOP proposal would be made on September 20, 1987. I asked them what the offer would include and they replied that they had not seen it but would have it on Sunday, September 20, 1987. They stated that they would like to present it to the company even if the sales closing date delay was



not obtained and they were again on strike. The meeting adjourned at approximately 12:15 p.m.

8. At approximately 4:00 p.m. on September 19, 1987 the appropriate representatives were advised that P&LE had been unable to obtain the delay in closing of the sale until October 10, 1987.

9. Subsequently, Mr. Roger Yanssens was notified as a representative of the group, that the ESOP proposal could be delivered to the P&LE on Sunday, September 20, 1987 as requested.

10. P&LE has a previously scheduled meeting with all labor groups who have served section 6 notices, on September 25, 1987.

/s/ J.D. Peters  
J.D. Peters

Sworn to and subscribed before me, a Notary Public in and for the County of Allegheny, PA., this 21st day of September, 1987.

John D. Hartman  
Notary Public

**BEFORE THE  
INTERSTATE COMMERCE COMMISSION  
WASHINGTON, D.C.**

**Finance Docket  
No. 31121**

P&LE RAILCO, INC.—EXEMPTION—ACQUISITION AND  
OPERATION—THE PITTSBURGH AND LAKE ERIE RAIL-  
ROAD COMPANY, and THE YOUNGSTOWN AND SOUTH-  
ERN RAILWAY COMPANY

**Finance Docket  
No. 31122**

CHICAGO WEST PULLMAN CORPORATION—CONTINU-  
ANCE IN CONTROL EXEMPTION—P&LE RAILCO, INC.  
AND—CONTROL EXEMPTION—THE PITTSBURGH,  
CHARTERS AND YOUGHIOGHENY RAILWAY COMPANY

**PETITION TO REJECT VERIFIED NOTICES  
OF EXEMPTION AND REQUEST FOR STAY  
PENDING RULING ON PETITION TO REJECT**

On September 19, 1987, the P&LE Railco, Inc. (Railco) filed a Verified Notice of Exemption with this agency purporting to invoke the exemption from the prior approval requirements of 49 U.S.C. §10901 which was granted to all newly formed rail carriers by *Ex Parte No. 392 (Sub. No.-1)*, 1 I.C.C. 2d 810 (1986), *aff'd sub nom. Illinois Commerce Comm. v. ICC*, 817 F.2d. 145 (D.C. Cir. 1987) (Table), as set forth in 49 C.F.R. §1150.31, *et seq.* At the same

time, Railco's real owner, the Chicago West Pullman Corporation (CWP), filed a Notice of Exemption under 49 C.F.R. §1180.2(d)(2) to control Railco, its immediate parent, Chicago West Pullman Transportation Corp. (CWPT), and its affiliate PC&Y Holdings (Holdings). The Railway Labor Executives' Association (RLEA) respectfully submits that the Verified Notices are deficient and should be rejected under 49 C.F.R. §1104.10, for they fail to identify all of the rail ownerships being transferred by this transaction and do not comply with the requirements of 49 C.F.R. §§1105.7 and 1105.11.

Since RLEA and the public will suffer irreparable harm if the parties to this sale transaction consummate the sale while this petition to reject is still pending, RLEA requests that the Commission stay the effectiveness of the exemptions under 49 C.F.R. §§1150.32(b) and 1180.2(d)(2) pending such a ruling.

**A. Railco's and CWP's Verified Notices Of Exemption Are Inaccurate And Omit Relevant Information**

Railco's Notice of Exemption states that it will be acquiring the rail lines, operating properties and certain other assets of the Pittsburgh & Lake Erie Railroad Company (P&LE) and its wholly-owned subsidiary, the Youngstown & Southern Railway Company (Y&S). CWP's notice shows further that the P&LE will also be transferring its one-half ownership interest in the Pittsburgh, Chartiers & Youghiogeny Railway Company (PC&Y). However, the Notices fail to mention that among the assets of the P&LE being transferred is a part ownership of the Mononogahela Railway Company (MR), in which the P&LE is a one-third owner, along with Conrail and CSX Transportation. See P&LE's Annual Report to the Pennsylvania Public Utility Commission for the year ended December 31, 1986, a copy of which is attached hereto as Attachment 1. Despite P&LE's one-third ownership of MR, this fact is not disclosed in either Notice of Exemption even though P&LE's

interest in MR will be conveyed to Railco.<sup>1</sup> This inaccuracy in the Notice is significant for several reasons: First, it omits reference to the fact that Railco will obtain an interest in another carrier, the MR, which is a rail carrier jointly owned with two Class I carriers; acquisition of control of two rail carriers by a non-carrier is a section 11343(a)(4), and not a Section 10901 transaction. Second, Railco and CWP have indicated that in compliance with 49 C.F.R. §§1150.33(g) and 1180.4(g)(3), they have given the notice required by 49 C.F.R. §1105.11, and presumably, sent an environmental notice to the states where the affected rail lines are located (presumably Pennsylvania and Ohio); however, there is no indication that a notice has been provided to the State of West Virginia where much of MR's line is located. And third, RLEA understands that although P&LE is one of three owners of the MR, the P&LE has been responsible for labor relations on the MR. Thus, the fact that Railco would assume P&LE's interests in MR is of great interest to rail labor. See, Declaration of W. R. LaRue, attached hereto as Attachment 3, at ¶3.

Moreover, Railco and CWP have failed to disclose that among P&LE's assets is the Montour Railroad Company (MTR) which P&LE has sought to abandon. P&LE had failed for exemption from prior Commission approval under 49 U.S.C. §10903 of its abandonment of the entire MTR line (Docket AB-160 (Sub-No. 5x)); following a Com-

<sup>1</sup> In a hearing in the U.S. District Court for the Western District of Pennsylvania relating to the labor relations aspects of this transaction, Gordon E. Neuenschwander, President of P&LE, testified that after the sale of P&LE's remaining assets will be some real property and approximately 6,000 rail cars. He did not state that P&LE would retain its interest in MR. Transcript of Neuenschwander testimony at 15-16, a copy of the Transcript is attached hereto as Attachment 2. Also, P&LE's Director of Labor Relations has informed rail labor that the P&LE's ownership in the MR is also being transferred to the CWP system. See, Declaration of W. E. LaRue at ¶2, attached hereto as Attachment 3.



mission decision granting an exemption, the RLEA requested reopening on the basis that MTR was not a separate corporate entity but rather merely a part of the P&LE. On August 31, 1987, the Commission served a decision granting RLEA's request for reopening. See, *Montour Railroad Company—Abandonment Exemption-In Allegheny and Washington Counties, Pa.*, Docket No. AB-160 (Sub-No. 5x). Since the abandonment exemption proceeding has been reopened, the line is not yet abandoned, and this matter is still pending; its resolution may have an impact on the subject transaction and certainly is a matter which should have been set forth in Railco's and CWP's Notices of Exemption.

**B. Railco's And CWP's Verified Notices Are Incomplete In That They Fail To Comply With 49 C.F.R. §§1105.7 and 1105.11**

When Railco's and CWP's Verified Notices are examined, they both show that Railco and CWP did not submit an Environmental Report as required by 49 C.F.R. §1105.7, nor do those notices contain a copy of the notice which Railco and CWP purportedly used to comply with 49 C.F.R. §1105.11 as required by 49 C.F.R. §§1150.33(g) and 1180.4(g)(3). These deficiencies require that the Verified Notices be rejected *before* the sale is consummated and the new operator's drastic cut-back in employment levels damages the environment.

While 49 C.F.R. §§1150.33 and 1180.4(g) do not specifically state that an Environmental Report is required to be filed along with a Verified Notice of Exemption, they do not provide, as Railco and CWP assumed, that a new carrier or person seeking control is relieved of the obligation under 49 C.F.R. §1105.7 to file such a report in an acquisition or a control case. As this Commission explained in Docket AB-239x, *S.R. Investors, LTD.—Abandonment*, served July 20, 1987, even though the environmental report regulations—i.e., 49 C.F.R. §1105.7—

are not cross-referenced under the exemption rules, they still apply to rail exemptions. Slip op. at 10. Since the environmental regulations in Part 1105 are intended to implement the policies of both the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §4332, *et seq.*, and the National Historic Preservation Act of 1966, 16 U.S.C. §470, *et seq.*, the policies of those Acts, this Agency has stated, are applicable even if the carriers are proceeding by way of an exemption to effectuate a transaction which, if it had been the subject of an application for approval, would have required environmental impact analysis:

The environmental reporting requirements of 49 CFR 1105.7 should be applied to abandonment exemption proceedings under 49 U.S.C. 10505 (as well as to abandonment applications filed under section 10903) [and, RLEA submits, to exemptions under *Ex Parte No. 392* or under 49 C.F.R. §1180.2(d)]. An environmental report is intended to ensure agency knowledge and consideration of the possible environmental consequences of pending proceedings. An environmental report also ensures adequate notice to environmental agencies.

Docket AB-239x, *supra*, slip op. at 10.

This is not a hollow or technical requirement in this case, for the P&LE is a rail carrier which owns lines which have been in operation for almost 100 years. As shown by the attached Declaration of Ms. Maria S. Lazar, which is attached hereto as Attachment 4, several of the P&LE's structures are currently listed on the National Register of Historic Places (NRHP), and many other structures are over 50 years old and may meet NRHP criteria. See, *Boyd v. Roland*, 789 F.2d 347, 349 (5th Cir. 1986); Docket No. AB-239x, *supra*, slip op. at 9. Moreover, as shown by the Declaration of Mr. W. E. LaRue at ¶4, CWP intends to reduce the P&LE current employment levels of around



750 people to around 210 employees, plus an unspecified number of supervisors. Thus, the maintenance of those historical structures and their preservation is potentially in jeopardy. Also, CWP's plans to reduce P&LE's employment levels so drastically places in serious question many other environmental matters which invariably arise when a rail carrier operating in a populace area such as Pittsburgh, Pennsylvania and Youngstown, Ohio, provides rail service without adequate maintenance or personnel to operate safely. See, LaRue Declaration at ¶5.

These concerns are heightened in this case by Railco's and CWP's failure to file an Environmental Report and their failure to file the notice, if any, which they provided to the appropriate state agencies under 49 C.F.R. §1105.11. By failing to show this Agency the manner in which they complied with Section 1105.11, Railco and CWP have deprived this Agency of a record to enable this Agency to comply with NEPA and Section 106 of NHPA by considering the effect of this sale on both the environment and historical sites *before* this Agency allows the transaction to occur. *E.g.*, Docket AB-239x, *supra*. Unless this agency does not know exactly what form of notice, if any, was given to the appropriate state agencies, the failure of a state agency to object cannot be used as support for a conclusion that the states do not foresee an adverse environmental impact. Also, without the appropriate state impact analysis and an adequate Environmental Report, this Commission's Section of Energy and Environment cannot be expected to have sufficient information to perform an environmental assessment.

One final concern over the completeness of Railco's and CWP's certificates under 49 C.F.R. §§1150.33(g) and 1180.4(g)(3) should be noted. Railco and CWP state that they have complied with the notice requirements in 49 C.F.R. §1105.11 "to the extent that those requirements are applicable to the transaction that is the subject of this notice." Verified Notice in Finance Docket No. 31121 at

4; Notice in Finance Docket No. 31122 at 5. The problem with those certifications is that Railco and CWP may have acted under the false impression that they are not required by 49 C.F.R. §1105.11 to provide a notice because 49 C.F.R. §1105.6(c)(2) excuses an applicant from the requirements of filing an Environmental Report or giving notice to the states where the transaction involves a change in ownership. However, Section 1105.6(c)(2), by its very terms, does not apply here because this transaction also "involv[es] a change in carrier operations including overall levels of employment. . . ." 49 C.F.R. §1105.6(c)(2). See, Declaration of W. E. LaRue at ¶4.5. By not attaching their environmental notices to their Verified Notices, Railco and CWP have not given this agency an adequate record to assure itself that the notices were in fact given, and, thus, the certificates of compliance with Section 1105.11 are inadequate.

Since Railco and CWP have not complied with 49 C.F.R. §1105.11, and have not filed the Environmental Report required by 49 C.F.R. §1105.7, this Agency should reject their Notices of Exemption.

## II. REQUEST FOR A STAY AND REASONS THEREFORE

RLEA respectfully submits that a stay of the effectiveness of the exemption in this case pending a Commission ruling on this petition to reject and pending a ruling on RLEA's Complaint in Finance Docket No. 31126, *RLEA v. P&LE*, is warranted by the equities in this case and by the fact that RLEA is very likely to succeed on the merits of its challenges to the sufficiency of the Notices and to the applicability of *Ex Parte* No. 392 to the consolidation transaction at bar.

As this agency explained in Finance Docket No. 31089, *Montana Rail Link, Inc.—Exemption*, served July 31, 1987, the traditional standards for interim injunctive relief as set forth in *Washington Metropolitan Area Transit Comm.*

*v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977), are applicable to stay requests of ICC orders, and require both a balancing of the equities and a consideration of that balance with the likelihood of success on the merits. Finance Docket No. 31089, *supra*, slip op. at 3. In this case, RLEA clearly should prevail on its petition to reject. Moreover, it is respectfully submitted, the facts in this case will establish that this sale is actually one subject to Section 11343(a), and not Section 10901. Also, RLEA respectfully submits, a balancing of the equities strongly favors the employees and the public and, thus, requires that a stay be granted.

Here, the Verified Notices do not comply with the requirements of 49 C.F.R. §§1105.7 and 1105.11, and, thus, must be rejected as being incomplete. Since the notices are incomplete in a manner which vitiates the ability of ~~this~~ Agency to satisfy its obligations under NEPA and Section 106 of NHPA, and since those Acts are not subject to a retroactive remedy where their pre-consummation violation is apparent on the face of an agency action, this stay must be granted under the public interest considerations protected by NEPA and by Section 106 of NHPA. Moreover, as explained above, a sale before those Acts are complied with has the very real potential in this case, due to CWP's plans to cut P&LE's employment levels so drastically, of damaging both the environment and protected historical structures before this Agency has an opportunity to comply with the policies of those Acts. LaRue Declaration at ¶5. That potential harm is irreparable.

Also, as shown by the Petition for a Temporary Cease and Desist Order which RLEA has filed in its Complaint case, Finance Docket No. 31126, the impact of this sale on employees will be devastating and irreparable. Over 400 of the P&LE's current 650 contract employees will lose their jobs once this sale occurs. Those that are able to obtain employment with the new P&LE—i.e., Railco—will do so under working conditions and pay that are sub-

stantially less favorable than they currently enjoy. LaRue Declaration at ¶4. If RLEA ultimately prevails on the merits of its Complaint, P&LE, CWP and Railco will be required to reimburse those employees for the losses which they suffered in the interim, but there will be a very real question as to the ability of those parties to pay such an award. P&LE will be insolvent once this transaction occurs (Attachment 2, Tr. at 10, 16), but apparently it is not now insolvent. *Id.* at 14. Thus, the harm to employees, if allowed to occur, will be irreparable.

On the other hand, there can be no harm to the P&LE, CWP or to Railco, if this stay is granted, which is not of their own making. P&LE has stated in Court that if the sale is delayed, its creditors will seek to have it liquidated. Attachment 2, Tr. at 11. However, that cannot occur except under the Railroad Reorganization Provisions of the Bankruptcy Code, 11 U.S.C. §1161, *et seq.*, in which case the rights of *all* creditors (and not just the 22 creditors being given preferential treatment under this sale) and the public will be protected. Also, in such a proceeding, P&LE employees will be able to have their ESOP proposal considered and, RLEA submits, accepted. *See*, Declaration of W. E. LaRue at 16.

### CONCLUSION

For the reasons set forth above, RLEA respectfully requests that the Verified Notices be rejected as incomplete, and that this Commission stay the effectiveness of the exemptions pending a ruling on this petition to reject.

Respectfully submitted,

/s/ John O'B. Clarke, Jr.

John O'B. Clarke, Jr.

Richard S. Edelman

HIGHSAW & MAHONEY, P.C.

Suite 210

1050 17th Street, N.W.

Washington, D.C. 20036

(202) 296-8500

Date: September 25, 1987

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused to be served a copy of the foregoing Petition To Reject Verified Notices Of Exemption And Request For Stay Pending Ruling On Petition To Reject by hand delivery to the following:

Edward K. Wheeler, Esquire

WHEELER & WHEELER

1729 H Street, Northwest

Washington, D.C. 20006

Dated at Washington, D.C. this 25th day of September, 1987.

/s/ John O'B. Clarke, Jr.

John O'B. Clarke, Jr.

**BEFORE THE  
INTERSTATE COMMERCE COMMISSION  
WASHINGTON, D.C.**

**Finance Docket  
No. 31126**

RAILWAY LABOR EXECUTIVES' ASSOCIATION,  
400 First Street, N.W.  
Washington, D.C. 20001

*Complainant,*

v.

PITTSBURGH & LAKE ERIE RAILROAD COMPANY,  
Commerce Court  
Four Station Square  
Pittsburgh, PA. 15219-1199,

and

CHICAGO WEST PULLMAN CORPORATION;  
CHICAGO WEST PULLMAN TRANSPORTATION CORP.;  
P&LE RAILCO, INC.; and PC&Y HOLDINGS, INC.,  
2728 East 104th Street  
Chicago, ILL. 60617

*Defendants.*

**COMPLAINT FOR CEASE AND DESIST  
ORDER AND OTHER RELIEF**

1. This is a complaint by the Railway Labor Executives' Association (RLEA) against the Pittsburgh & Lake Erie Railroad Company (P&LE) and the purchaser of the rail properties of the P&LE—i.e., the Chicago West Pullman Corporation (CWP) and its corporate affiliates, Chicago



West Pullman Transportation Corp. (CWPT), P&LE Railco, Inc. (Railco), and PC&Y Holdings, Inc. (Holdings)—to enforce the commands of 49 U.S.C. §11343(a)(2),(3),(4) and (5), which complainant RLEA submits defendants are violating by transferring without prior Commission approval under 49 U.S.C. §11344 the rail properties of the P&LE and the Youngstown & Southern Railway Company (Y&S), and the P&LE's ownership interests in two rail carriers, the Pittsburgh, Chartiers & Youghioghenny Railway Company (PC&Y) and the Monogahela Railway Company (MR). By this Complaint, RLEA is requesting that this Commission issue an immediate cease and desist order to prohibit defendants from consummating this purchase and acquisition of control until they have complied with the prior approval requirements of 49 U.S.C. §11343(a). Alternatively, if an immediate cease and desist order is not issued and defendants consummate this sale, complainant RLEA requests that this Commission both order defendants CWP and its affiliates to divest their interest in the P&LE assets, and direct all defendants to make whole all employees who may have been improperly affected in the interim.

### PARTIES

2. Complainant RLEA is an unincorporated association of the Chief Executive Officers of nineteen (19) labor organizations which collectively represent most of the organized rail employees in this country, including virtually all of P&LE's organized employees. RLEA maintains its offices at 400 First Street, N.W., Washington, D.C. 20001. A list of RLEA's member organizations is attached hereto as RLEA Exhibit 1.

3. The labor organizations which represent P&LE employees and whose chief executive officers are members of the RLEA are "representative[s]" as that term is defined in Section 1 Sixth of the Railway Labor Act, 45 U.S.C. §151 Sixth. Those organizations are the duly des-

ignated representatives of various crafts or classes of P&LE employees and with RLEA, have standing before this agency under 49 U.S.C. §10328(a).

4. Defendant P&LE is a privately-held corporation incorporated in the State of Delaware with its principal place of business in Pittsburgh, Pennsylvania. P&LE operates a 182-mile railroad in western Pennsylvania and eastern Ohio, transporting coal and steel to the Great Lakes region. P&LE is a Class II rail carrier and a "carrier" within the meaning of 45 U.S.C. §151 First. P&LE maintains offices at Commerce Court, Four Station Square, Pittsburgh, Pennsylvania 15219-1199. P&LE owns the Y&S, and owns a 50% interest in the PC&Y, and a 33-1/3% interest in the MR.

5. Defendant CWP is a holding company which owns and operates at present four Class III rail carriers: Chicago, West Pullman & Southern Railroad company ("CWPSR"), Manufacturers Junction Railway company ("MJ"), Newburgh & South Shore Railroad Company ("NSS") and Wisconsin & Calumet Railroad Company ("WC"). Defendant CWP has formed defendant CWPT a wholly-owned subsidiary, and has caused defendant CWPT to form two wholly-owned subsidiaries, defendants Railco and Holdings.

6. Defendants CWP, CWPT, Railco, and Holdings maintain offices at 2728 East 104th Street, Chicago, Illinois 60617. CWP's subsidiary, CWPSR, also maintains its office at that location.

### STATEMENT OF FACTS

7. In June or July of 1987, defendant P&LE entered into an agreement, presumably with CWPT, whereby defendant Railco would acquire the rail lines, operating properties and certain other assets of the P&LE and its subsidiary, the Y&S.

8. Upon acquisition of the rail lines, operating properties and certain other assets of P&LE and YS, defendant Railco will become the operator of the P&LE and YS rail lines.

9. As a result of the transaction between defendants CWPT, Railco and P&LE, Railco will also acquire and operate over (1) 31.6 miles of trackage rights over a Conrail line between Youngstown, Ohio and Shenango, Pennsylvania; (2) 60.6 miles of trackage rights over a Conrail line between Youngstown, Ohio and Ashtabula Harbor, Ohio; and (3) 136.8 miles of trackage rights over a Norfolk & Western line between Geneva, Ohio and Buffalo, New York.

10. Upon the closing of the transaction, defendant Railco will direct P&LE to deliver to Holdings 50% of the stock of the PC&Y. Conrail owns the other 50% interest in PC&Y. Defendant P&LE's President and CEO is currently the President and CEO of the PC&Y, and defendant P&LE both operates the PC&Y and handles the labor relations for that carrier.

11. Upon information and belief, Complainant RLEA states that defendant P&LE will transfer to defendant CWP, or to one or more of its affiliates, defendant P&LE's one-third interest in MR. Conrail and CSX Transportation own the remaining 66-2/3% of the MR, in equal ownership interests. Defendant P&LE's President and CEO is the President of the MR, and defendant P&LE operates the MR and performs its labor relations.

12. Defendant Railco was formed by defendant CWP for the purpose of acquiring P&LE's rail lines, operating properties and certain other assets.

13. Defendants CWP, CWPT, Railco and Holdings, and the CWPSR all have the same President, Roger E. Smith.

14. Defendant P&LE will receive approximately \$70 million in cash in return for the sale of its rail lines, operating properties and certain other assets to Railco;

however, defendant P&LE currently has debts in excess of \$125 million.

### COUNT I

15. The exemption sought by defendant Railco in its September 19, 1987 notice of exemption in Finance Docket No. 31121 applies only to transactions governed by 49 U.S.C. §10901.

16. 49 U.S.C. §10901, as relevant here, applies only to transactions involving an entity which has not previously been a rail carrier.

17. 49 U.S.C. §10901 does not apply to transactions involving the purchase of the properties of a rail carrier by an entity which has not previously been a rail carrier but which is related to, and is not independent of, a rail carrier. Moreover, 49 U.S.C. §10901 does not apply to the acquisition of control of at least two (2) rail carriers by an entity that is not a rail carrier.

18. Defendants CWPT, Railco and Holdings are controlled by CWP which also owns four other rail carriers, CWPSR, MJ, NSS and WC; moreover, defendants CWPT, Railco and Holdings will control three railroads by this sale transaction, as the term "control" is used in Section 11343(a) of the Act.

19. Upon information and belief, complainant RLEA states that defendants CWPT, Railco and Holdings are not independent from CWP and its other rail carrier subsidiaries.

20. Upon information and belief, RLEA states that CWP and/or its other subsidiaries either provided funds for CWPT's and Railco's purchase of the P&LE assets, or guaranteed loans for CWPT and/or Railco which are the source of the funds to be used in purchasing the P&LE assets.



21. By seeking to use the exemption provided in 49 C.F.R. §1150.31, *et seq.*, as "authority" to transfer both the rail properties of the P&LE, and that carrier's interests in the PC&Y and MR, defendants are violating the prior approval requirements of 49 U.S.C. §11343(a)(2),(3),(4) and (5).

## COUNT II

22. RLEA repeats and realleges and incorporates herein each and every allegation contained in paragraphs 1 through 21 above.

23. In a hearing in the United States District Court for the Western District of Pennsylvania regarding the labor relations aspects of the sale of P&LE's rail lines, operating properties and certain other assets, Gordon E. Neuenschwander, President and CEO of the P&LE testified that the transaction between P&LE and CWP was structured deliberately to avoid treatment of the transaction as one governed by 49 U.S.C. §11343, and subject to 49 U.S.C. §11347. See Transcript of Mr. Neuenschwander's testimony (attached as an Exhibit 2 to this Complaint) at pp. 24-26.

24. Defendant Railco is not entitled to the exemption sought in its Notice of Exemption in Finance Docket No. 31121 because it was created for the purpose of unlawfully evading the obligations it, defendant P&LE, and defendants CWP and its affiliates, would have had under 49 U.S.C. 11347 if the transaction were structured as required by 49 U.S.C. §11343.

## COUNT III

25. Complainant RLEA repeats and realleges and incorporates herein each and every allegation contained in paragraphs 1 through 21 above.

26. Defendant CWP has sought an exemption from prior Commission approval of its control of Railco and Holdings pursuant to 49 C.F.R. §1180.2(d)(2).

27. 49 C.F.R. §1180.2(d)(2) does not apply to control transactions which involve a Class I carrier.

28. Defendants' Railco purchase of P&LE's rail lines, operating properties and certain other assets involves the acquisition of trackage rights over rail lines owned by Conrail and the Norfolk and Western Railway, which are Class I carriers; this transaction also involves the transfer of P&LE's joint ownership of the PC&Y with Conrail, and the P&LE's joint ownership of MR with Conrail and CSX Transportation. All three of those carriers—i.e., Conrail, Norfolk & Western and CSX Transportation—are Class I rail carriers.

29. Defendant CWP is not entitled to the exemption sought in its Notice of Exemption because the subject transaction involves Class I carriers and, thus, is not an exempt transaction under 49 C.F.R. §1180.2(d)(2). Therefore, plans to consummate this control transaction without prior ICC approval are in violation of 49 U.S.C. §11343(a).

## RELIEF REQUESTED

WHEREFORE, RLEA requests that the Commission:

A. ORDER that defendants Railco and P&LE cease and desist from implementing the transaction referred to in Finance Docket No. 31121;

B. ORDER defendant CWP and its subsidiaries to cease and desist from implementing the control transactions for which they have sought an exemption in Finance docket No. 31122;

C. However, if this sale is consummated before the Commission issues a cease and desist order, RLEA requests that this agency (i) direct defendant CWP and its



subsidiaries to divest their ownership interests in the P&LE assets and (ii) order defendants to make whole all employees who may have been adversely affected by this sale; and

D. Grant RLEA such other and further relief as this Commission deems to be just and proper.

### REQUEST FOR ORAL HEARING

Complainant RLEA requests that this Complaint be handled at an oral hearing. RLEA submits that the bad faith allegation in Count II and the financial dependence and control issues raised in Count I of this Complaint present credibility questions which can be handled only by an oral hearing with an opportunity to cross-examine witnesses and test their credibility.

Respectfully submitted,

/s/ John O'B. Clarke, Jr.

John O'B. Clarke, Jr.

Richard S. Edelman

HIGSAW & MAHONEY,

P.C.

Suite 210

1050 17th Street, N.W.

Washington, D.C. 20036

(202) 296-8500

Date: September 24, 1987

### UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

C.A. No. 87-1745

Judge Bloch

RAILWAY LABOR EXECUTIVES' ASSOCIATION

*Plaintiff,*

v.

PITTSBURGH & LAKE ERIE RAILROAD CO.,

*Defendant*

### SECOND SUPPLEMENTAL AFFIDAVIT OF JAMES D. PETERS

I, James D. Peters, being duly sworn on oath, depose and state as follows:

1. I am Director, Labor Relations, for the Pittsburgh and Lake Erie Railroad Company ("P&LE"). This second supplemental affidavit supplements my prior affidavits of September 16, 1987 and September 21, 1987.

2. As a preliminary matter, I would like to correct erroneous assertions by the Railway Labor Executives' Association that the P&LE never responded to the September 4, 1987 telegram of Robert A. Scardelletti, a Vice President for one of P&LE's unions, the Transportation Communications Union International. Mr. Scardelletti there requested that the meeting date of September 25, 1987, designated by P&LE for a meeting with all of its 14 unions to discuss the sale, be advanced as soon as possible to a date after September 8, 1987. By letter dated September 14, 1987, Gordon E. Neuenschwander, President and Chief Executive Officer of P&LE, responded that the September 25, 1987 date was the earliest convenient date for all

parties involved. A true and correct copy of this letter is attached to my original affidavit as Exhibit 8(a).

3. In my previous affidavit, I indicated that the P&LE had received Section 6 notices from many of P&LE's unions seeking changes to P&LE's collective bargaining agreements in connection with the sale of P&LE's railroad assets. Since that time, the P&LE has received Section 6 notices from two additional unions, the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers and the United Transportation Union, on September 15, and September 17, 1987, respectively. True and correct copies of these Section 6 notices are attached as Exhibits 1 and 2. P&LE, by letters dated September 18, 1987 from Mr. Neuenschwander, acknowledged receipt of these Section 6 notices and, without prejudice to P&LE's position that it had no duty to bargain over these notices, indicated that it was willing to discuss the notices at the previously arranged meeting on September 25, 1987. True and correct copies of these letters are attached as Exhibits 3 and 4.

4. After the Court ruled on September 21, 1987 that P&LE had not satisfied an obligation to bargain over the effects of the sale of its rail assets, P&LE met with representatives of all of its unions on September 23, 1987 to attempt to reach an agreement on the effects of the sale. P&LE's agreement to meet on the subject was without waiver or prejudice to its position that it did not have a duty to bargain over the effects of the sale. The discussions were continued at a meeting between the parties on September 25, 1987. While the parties exchanged proposals, no agreement was reached. The meetings have been recessed until the parties agree to reconvene.

5. In the meantime, the P&LE's operations continue to be curtailed by the strike. In addition, on September 23, 1987, picketing spread to the Pittsburgh, Chartiers and Youghiogheny Railway ("PC&Y"), which is owned 50% by

P&LE and 50% by Conrail. The PC&Y interchanges with the P&LE and Conrail. As a result of this picketing, the PC&Y's operations have also been curtailed, because P&LE is unable to interchange with PC&Y to provide rail service to and from industries located on the PC&Y.

/s/ James D. Peters  
James D. Peters

Sworn to and subscribed before me, a Notary Public in and for the County of Allegheny, Pennsylvania, this 30th day of September, 1987.

/s/ John D. Hartman  
Notary Public

## Attachment 3

September 16, 1987

James A. Fisher  
 General Chairman  
 United Transportation Union  
 Box 190, R. D. #1  
 Waynesburg, Pa. 15370

Mr. Gordon E. Neuenschwander, President  
 Pittsburgh & Lake Erie Railway Company  
 Commerce Court  
 4 Station Square  
 Pittsburgh, Pennsylvania 15219

Dear Mr. Neuenschwander:

In response to your notices to P&LE employees regarding the proposed sale of the P&LE's rail lines, operating properties and certain other assets, this Organization has advised you that it is our position that such a transaction cannot be effected without compliance with provisions of the Railway Labor Act regarding notice, negotiations and maintenance of the status quo pending completion of Railway Labor Act procedures. Additionally, we requested that you provide this Organization with information relating to this transaction.

The proposed sale will obviously affect the working conditions of P&LE employees so in the interest of expediting negotiations, but without prejudice to our position that P&LE had an obligation to serve its own Section 6 notice before entering any agreement for the sale of its rail line and other assets, please consider this letter a Section 6 notice; our proposals are contained in the attachment to this letter. This Organization intends to coordinate its bargaining in this manner with the other Organizations on the property and proposes that a meeting between P&LE and this organization be held at a mutually agreeable location and date in Pittsburgh Pennsylvania.

You have proposed a meeting in early September "in the interest of keeping employees informed of plans for P&LE's future". We are amenable to such a meeting without prejudice to this Organization's position regarding P&LE's obligations under the Railway Labor Act, and suggest such a meeting be held concurrent with the initial meeting we have proposed for negotiations regarding our proposals.

In order to facilitate our discussions we again request that, in advance of our meeting you provide us with information regarding this transaction; including, but not limited to contingencies which must yet be satisfied for the proposed sale to be completed, what filings will be made with the ICC, the expected date for consummation, anticipated effects on employees, the terms of the proposed sale, the process by which purchasers were solicited and the identity of any individual or entity who or which is providing financing for this transaction.

Sincerely

/s/ James A. Fisher  
 James A. Fisher  
 General Chairman U.T.U.  
 GO 787 P&LE RR



## ATTACHMENT

1. No employee of the P&LE Railroad Company who performed compensated service at any time between August 1, 1986 and August 1, 1987 or who was on an authorized leave of absence during that time period, who is represented by this organization shall be deprived of employment or placed in a worse position with respect to compensation or working conditions for any reason except resignation, retirement, death or dismissal for justifiable cause. Failure to relocate shall not be considered as justifiable cause for loss of benefits under this Agreement. The formulae for the protective allowances, with a separation option, shall be comparable to those established in the *New York Dock* conditions.
2. If an employee is placed in a worse position with respect to compensation or working conditions, that employee shall receive, in addition to a make-whole-remedy, penalty pay equal to three times the lost pay, fringe benefits and consequential damages suffered by such employee.
3. P&LE agrees to obtain binding commitments from any purchaser of its rail line operating properties and assets to assume all collective bargaining agreements (including this Agreement) with, and obligations to, P&LE employees who are represented by this Organization to hire P&LE employees in seniority order without physicals, and to negotiate with the P&LE and this Organization an agreement to apply this Agreement to the sale transaction and to select the forces to perform the work over the lines being acquired.

4. Any dispute or controversy over the application or interpretation of this Agreement shall be handled on the property in an expedited manner and may be referred by the employee or this Organization for adjustment in accordance with Section 3, Second of the Railway Labor Act to a Special Board of Adjustment to be established by the Agreement.

**INTERNATIONAL BROTHERHOOD OF BOILERMAKERS,  
IRON SHIPBUILDERS, BLACKSMITHS, FORGERS &  
HELPERS**

Attachment 4

September 8, 1987

Mr. Gordon E. Neuenschwander, President  
Pittsburgh & Lake Erie Railway Company  
Commerce Court  
4 Station Square  
Pittsburgh, Pennsylvania 15219

Dear Mr. Neuenschwander:

In response to your notices to P&LE employees regarding the proposed sale of the P&LE's rail lines, operating properties and certain other assets, this Organization has advised you that it is our position that such a transaction cannot be effected without compliance with provisions of the Railway Labor Act regarding notice, negotiations and maintenance of the status quo pending completion of Railway Labor Act procedures. Additionally, we requested that you provide this Organization with information relating to this transaction.

The proposed sale will obviously affect the working conditions of P&LE employees so in the interest of expediting negotiations, but without prejudice to our position that P&LE had an obligation to serve its own Section 6 notice before entering any agreement for the sale of its rail line and other assets, please consider this letter a Section 6 notice; our proposals are contained in the attachment to this letter. This Organization intends to coordinate its bargaining in this manner with the other Organizations on the property and proposes that a meeting between P&LE and all of the Organizations be held on September 8, 1987; at a mutually agreeable location in Pittsburgh, Pennsylvania.

You have proposed a meeting in early September "in the interests of keeping employees informed of plans for P&LE's future". We are amenable to such a meeting without prejudice to this Organization's position regarding P&LE's obligations under the Railway Labor Act, and suggest that such a meeting be held concurrent with the initial meeting we have proposed for negotiations regarding our proposals.

In order to facilitate our discussions we again request that, in advance of our meeting, you provide us with information regarding this transaction; including, but not limited to, contingencies which must yet be satisfied for the proposed sale to be completed, what filings will be made with the ICC, the expected date for consummation, anticipated effects on employees, the terms of the proposed sale, the process by which purchasers were solicited and the identity of any individual or entity who or which is providing financing for this transaction.

Sincerely,

/s/ A. V. Robey  
A. V. Robey  
International Representative  
Railroad Division

## ATTACHMENT

1. No employee of the P&LE Railroad Company who performed compensated service at any time between August 1, 1986 and August 1, 1987 or who was on an authorized leave of absence during that time period, who is represented by this organization shall be deprived of employment or placed in a worse position with respect to compensation or working conditions for any reason except resignation, retirement, death or dismissal for justifiable cause. Failure to relocate shall not be considered as justifiable cause for loss of benefits under this Agreement. The formulae for the protective allowances, with a separation option, shall be comparable to those established in the *New York Dock* conditions.
2. If an employee is placed in a worse position with respect to compensation or working conditions, that employee shall receive, in addition to a make-whole-remedy, penalty pay equal to three times the lost pay, fringe benefits and consequential damages suffered by such employee.
3. P&LE agrees to obtain binding commitments from any purchaser of its rail line operating properties and assets to assume all collective bargaining agreements (including this Agreement) with, and obligations to, P&LE employees who are represented by this Organization to hire P&LE employees in seniority order without physicals, and to negotiate with the P&LE and this Organization an agreement to apply this Agreement to the sale transaction and to select the forces to perform the work over the lines being acquired.

4. Any dispute or controversy over the application or interpretation of this Agreement shall be handled on the property in an expedited manner and may be referred by the employee or this Organization for adjustment in accordance with Section 3, Second of the Railway Labor Act to a Special Board of Adjustment to be established by the Agreement.



IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

C.A. No. 87-1745  
Judge Bloch

RAILWAY LABOR EXECUTIVES' ASSOCIATION,  
*Plaintiff,*

v.

PITTSBURGH AND LAKE ERIE RAILROAD COMPANY,  
*Defendant.*

SECOND SUPPLEMENTAL AFFIDAVIT OF GORDON E.  
NEUENSCHWANDER

I, Gordon E. Neuenschwander, being duly sworn on oath,  
deposes and states as follows:

1. This affidavit supplements my prior affidavits of September 16 and 21, 1987.
2. The strike by The Pittsburgh and Lake Erie Railroad Company's ("P&LE") unions and the Railway Labor Executives' Association ("RLEA") continues substantially to curtail the operations of P&LE and cause its already precarious financial situation to further deteriorate.
3. Because of the threat by P&LE's unions to spread their picketing to any carriers with interchange freight with P&LE, P&LE's connecting carriers, which are principally Conrail and CSX Transportation, have in fact refused to interchange freight with P&LE. This refusal has cut off P&LE from the nation's rail system.
4. By letter dated September 19, 1987, and received by P&LE on September 21, 1987, Mr. Brian M. Freeman, a consultant in the employ of RLEA, submitted a proposal

on behalf of RLEA for an employee purchase of P&LE's rail assets. The proposal purportedly would match the terms of P&LE's sales agreement with P&LE Railco, Inc. P&LE rejected the proposal on September 22, 1987.

/s/ Gordon E. Neuenschwander  
Gordon E. Neuenschwander

Sworn and Subscribed before me, a Notary Public in and for the County of Allegheny, PA, this 2nd day of October, 1987.

/s/ John D. Hartman  
Notary Public

BEFORE THE  
INTERSTATE COMMERCE COMMISSION  
WASHINGTON, D.C.

Finance Docket  
No. 31121

P&LE RAILCO, INC.—EXEMPTION—ACQUISITION AND  
OPERATION—THE PITTSBURGH AND LAKE ERIE RAIL-  
ROAD COMPANY, and THE YOUNGSTOWN AND SOUTH-  
ERN RAILWAY COMPANY

Finance Docket  
No. 31122

CHICAGO WEST PULLMAN CORPORATION—CONTINU-  
ANCE IN CONTROL EXEMPTION—P&LE RAILCO, INC.  
AND—CONTROL EXEMPTION—THE PITTSBURGH, CHAR-  
TIERS AND YOUGHIOGHENY RAILWAY COMPANY

PETITION FOR RECONSIDERATION  
OF DENIAL OF STAY OF NOTICES OF EXEMPTION

On September 25, 1987, the Railway Labor Executives' Association ("RLEA") filed a request for a stay of the effectiveness of notices of exemption filed in the above-captioned matters relating to the sale of the rail lines, operating properties and certain other assets of the Pittsburgh and Lake Erie Railroad Company ("P&LE"). The Commission served its Decision denying such a stay on September 29, 1987 (referred to herein as "Decision"), concluding that RLEA had not "demonstrated justification for a stay in accordance with the four criteria set forth

in *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977). Decision at 2.

Since the filing of its request for a stay, RLEA, and its attorneys and financial advisors, have had the opportunity to analyze the economic aspects of the underlying transaction, as well as antecedent transaction involving the P&LE. Based upon that analysis RLEA has this day filed a petition for revocation of the exemptions obtained in this matter. RLEA has asserted that the subject transaction will render P&LE insolvent, that it will result in an unfair distribution of P&LE's assets among P&LE's creditors including its employees, and that it is effectively a liquidation and an abandonment of the P&LE in circumvention of the Federal Bankruptcy Act and provisions of the Interstate Commerce Act regarding abandonments. RLEA argues that this evidence will demonstrate that the results of this transaction will be contrary to the National Rail Transportation Policy and that revocation of the exemptions is therefore necessary under 49 U.S.C. §10505(d). In this petition, RLEA will demonstrate that, based upon the evidence and argument contained in its petition for revocation, the Commission should reconsider its denial of the requested stay in effectiveness of the notices of exemption.

Additionally, RLEA will demonstrate that the question of whether the Notices comply with requirements governing historic places and structures is a matter which must be resolved by the Commission prior to completion of the transaction, and not in a subsequent revocation hearing.

Thus, for the reasons stated herein, the Commission should reconsider its decision on the requested stay of effectiveness of the notices of exemption and the stay should be imposed.

Finally, RLEA submits that even if its motion for reconsideration is denied, the Commission's Order should be

amended to conform to its Decision in which it stated that P&LE will be required to maintain its corporate existence pending a revocation proceeding.

## DISCUSSION

### A. Economic Aspects Of This Transaction And Antecedent Transactions

In its petition for revocation of exemptions RLEA sets forth facts which demonstrate that as a result of the proposed transaction P&LE will be rendered insolvent, that the sale of P&LE's rail lines, operating properties and certain other assets constitutes a liquidation and an abandonment of the P&LE in a manner which is inconsistent with controlling law, that the planned distribution of the proceeds of the sale will unfairly favor certain of P&LE's creditors and that the results of the transaction will be to injure employees who made concessions to P&LE in order to keep the railroad in operations. RLEA will not reiterate that discussion here but incorporates it by reference. RLEA also relies on, and incorporates herein, the Declaration of Brian M. Freeman, which is attached to its petition for revocation.

### B. Historic Preservation Issues

The Commission stated that with regard to P&LE's failure to comply with Section 106 of the National Historic Preservation Act of 1966, 16 U.S. §470(f), the ICC stated that it would "consult with appropriate officials in the affected states to ensure the historic integrity of sites and structures 50 years old or older" and that "a stay is therefore not necessary." Decision at 4.

However, Section 106 of the NHPA specifically provides that a federal agency "having authority to license any undertaking shall . . . prior to the issuance of any license . . . take into account the effect of the undertaking on any district, state, building structure or object that is included

in or eligible for inclusion in the National Register (of Historic Places)." Emphasis added.

### C. Labor Stability Issues

The Commission also noted that the transaction has triggered labor unrest and it concluded that "[a] grant of the requested stay would prolong the uncertainty surrounding the fate of the P&LE and also prolong the controversy and attendant disruption in rail service surrounding the sale." Decision at 4. The Commission did not address the possible prolongation of the controversy and attendant disruption of rail service surrounding the sale (including possible disruption of service on connection carriers) if the sale is completed.

## ARGUMENT

### A. The RLEA Has Demonstrated The Necessity For A Stay Under Criteria Governing Such Determination

RLEA submits that the information submitted in this memorandum demonstrates that it has satisfied the four criteria required for a stay and that the Commission should accordingly reconsider its Decision and impose the requested stay.

1. Likelihood of success on the merits. Exemptions under §10505 are permissible only when regulation "is not necessary to carry out the transportation policy of Section 10101a." RLEA's petition for revocation has raised substantial questions as to whether the transaction in this case is consistent with the transportation policies relating to: fostering of "sound economic conditions in transportation" (§10101a(5)), encouraging "honest and efficient management of railroads" (§10101a(10)), encouraging "fair wages and suitable working conditions" (§10101a(12)) and ensuring the availability of accurate cost information in regulatory proceedings (§10101a(14)). RLEA has demonstrated that completion of the proposed sale will render



P&LE insolvent, will unfairly favor the 22 creditors selected by P&LE to the detriment of its other creditors including P&LE's employees and will effectively result in liquidation and abandonment of the P&LE in circumvention of provisions of the Railroad Reorganization provisions of the Bankruptcy Act, 11 U.S.C. §1161, *et seq.*, and the abandonment procedures set forth in 49 U.S.C. §§10903-10905. These matters certainly implicate the transportation policies regarding sound economic conditions in transportation, honest and efficient management of railroads, fair wages and suitable working conditions and the availability of accurate cost information in regulatory proceedings. Accordingly, the facts of this case regarding the results of the proposed sale on P&LE's creditors, employees and the public indicate a substantial likelihood of success on the merits of RLEA's petition for revocation of the exemption of this transaction from regulation on the basis that such regulation is necessary to carry out the rail transportation policy. Accordingly, issuance of a stay is appropriate to preserve that status quo pending resolution of these questions.

Second, while the Commission stated that it would ensure the preservation of the historic integrity of P&LE's sites and structures which are 50 years old or older, the NHPA, §106 explicitly requires that "prior to approval" of a license, federal agencies must take into account the effect on historic sites and structures. The petitions in this case provide no basis for the Commission to perform that function as no information is provided on this matter.

Moreover, RLEA has demonstrated that P&LE Railco, Inc. intends to employ approximately 210 people to perform the work which between 652 and 660 P&LE employees now perform and this will certainly result in a drastic reduction of the number of employees who will maintain the historic structures on the P&LE's rail lines. Affidavit of William E. LaRue, paras 4 and 5, Attachment 3 to RLEA's Petition To Reject Verified Notices Of Ex-

emption And Request For Stay Pending Ruling On Petition To Reject. Thus, the only evidence of record on this matter indicates that there is clearly a need for Commission scrutiny of the impact of this transaction on P&LE's historic structures *prior* to implementation of the proposed sale. Although the Commission's Order provides that the applicants are prohibited from taking action which would jeopardize historic structures, the Commission has not addressed the real concern here which is not that P&LE Railco, Inc. will destroy existing structures but that it will substantially reduce the work force which maintains those historic and prevents them from falling into disrepair. Accordingly, there is a substantial likelihood that RLEA will succeed on the merits of its claim that the petitions should be rejected for failure to comply with requirements relating to historic structures.

Thus, the information presently presented to the Commission demonstrates that there is a strong likelihood that RLEA will succeed on the merits on its challenge to this transaction.<sup>1</sup>

## 2. Irreparable Harm In The Absence Of A Stay

The Commission concluded that RLEA had not demonstrated that the P&LE employees it represents would

<sup>1</sup> Additionally, the Commission stated that RLEA was unlikely to prevail on the argument that the subject transaction is actually governed by Section 11343. Decision at 3, citing *Railway Labor Executives' Association v. ICC*, 819 F.2d 1172 (D.C. Cir. 1987). However, in that case the Commission expressly found that there were sufficient indicia of independence of the acquiring entity from its parent, *Id.* at 1173, and that there was no evidence to suggest that the subsidiary was formed exclusively to elude Section 11343. *Rochester & Southern Railroad, Inc. and Genesee and Wyoming Industries, Inc., Exemption From 49 U.S.C. 10901, 11301 and 11343*, F.D. No. 30779, served July 18, 1986, at 5. In contrast, here RLEA has shown that there is a substantial question as to P&LE Railco's independence from its parent companies since, as a newly formed carrier it does not have \$70 million with which to complete this transaction; and that the transaction was structured deliberately to avoid §1134. Neuenschwander, Tr. at 24-26.

suffer irreparable harm as a result of the stay, citing procedures for revocation of the exemption. Decision at 3. While the Commission assumed that the employees could be made whole following a revocation proceeding, so long as P&LE maintains its corporate existence (*id.*) the facts regarding P&LE's finances adduced in this petition, and RLEA's petition for revocation, demonstrate that the employees could *not* be made whole following a revocation proceeding because the P&LE will be rendered grossly insolvent as a result of the proposed sale. P&LE currently is at best barely able to pay all of its commitments (according to Mr. Neuenschwander, Tr. at 14), and at worst unable to pay all of its commitments in full (*see* Pennsylvania Utilities Commission filing). If the proposed sale is completed it is clear that the P&LE will be unable to pay a large part of its obligations to many of its creditors including its employees. Additionally, as the Declaration of RLEA's financial advisor Brian M. Freeman demonstrates, if the \$70 million in proceeds from the proposed sale are distributed to P&LE creditors it will be legally difficult and practically impossible to recover those monies and restore the status quo.

Moreover, if the Commission exercises its discretion to impose arrangements for the protection of P&LE's employees under §10901, or if the Commission is required to impose such protections in the event it finds that this transaction is actually governed by §11343. It is absolutely clear that the employees will not be able to be made whole following a revocation proceeding. Accordingly, RLEA has demonstrated that P&LE's employees will be irreparably harmed unless a stay is issued.

### 3. Harm To Other Interested Parties

The Commission concluded that issuance of the requested stay would harm P&LE's shippers and creditors. Decision at 4. However, the facts adduced herein, and in RLEA's petition for revocation, demonstrate that in fact

many of P&LE's creditors will be harmed if the proposed sale is effected since P&LE plans to distribute the proceeds of the sale in a manner which will favor certain creditors.

The Commission assumed that the only alternative to the proposed sale was a cessation of operations which would be to the detriment of shippers and P&LE's creditors. However, the Commission did not address the fact that the RLEA had offered an alternative disposition of P&LE's rail lines and assets by arranging for a purchase through an employee stock ownership plan. *See* Affidavit of William LaRue, Attachment 3 to RLEA's Petition For Stay, para. 6. Additionally, in connection with its petition for revocation, the RLEA has supplied the Declaration of its financial advisor, Brian M. Freeman, in which he discusses various alternatives to the sale to P&LE Railco, Inc., including a purchase of the P&LE through an employee stock ownership plan. Mr. Freeman further explains how the employee stock ownership plan would be more likely to maintain the viability of the P&LE. Accordingly, there are alternatives to the proposed sale which would maintain operations and protect shipper and creditor interests. Thus, other interested parties will not be adversely affected by imposition of a stay on the exemptions.

Moreover, it must be recognized that if the exemption is stayed, the P&LE can not simply cease operations and unilaterally liquidate. That can not occur except under the Railroad Reorganization provisions of the Bankruptcy Code, 11 U.S.C. §1161, *et seq.*; under those provisions the rights of all P&LE creditors (not just those selected by P&LE) will be protected as will shippers and the general public. In the event P&LE seeks liquidation under these provision, the employees will again be able to seek to purchase the P&LE and thereby continue operations and preserve the interests of creditors. Furthermore, P&LE can not simply abandon its lines and discontinue service. Under 49 U.S.C. §10903, any such abandonment and discontinuance of ser-



vice must be approved by the Commission. And should the P&LE seek permission to abandon under §10903, the employees could, under 49 U.S.C. §10905, offer to purchase the P&LE and thereby continue operations. Thus, there is no basis for the assumption that granting the requested stay will be injurious to shippers, rather the record before the Commission demonstrates that service will be continued.

Moreover, the Commission seems to have assumed that completion of the sale to P&LE Railco, Inc. will end the disruption of services to shippers which has resulted for employee discontent about the transaction. However, there is no basis for this assumption. In fact, the evidence indicates that completion of the proposed sale will actually escalate employee discontent and result in additional job actions. This could include extension of the job actions to carriers which connect with the P&LE. See *Burlington Northern Railroad Co. v. Brotherhood of Maintenance of Way Employees*, 481 U.S. —; 95 L.Ed.2d 381 (1987). Thus, contrary to the conclusions of the Commission, there is absolutely no basis for the Commission conclusion that completion of the proposed sale will eliminate the disruption of service on P&LE's lines. Accordingly, the harm to other anticipated by the Commission is without substantial basis.

#### 4. The Public Interest

The Commission concluded in summary fashion that the public interest would be served by allowing the transaction to go forward. However, RLEA has demonstrated herein that if this transaction is completed, creditors will be adversely affected because P&LE will be unable to pay large amounts of debt, the P&LE will circumvent statutory procedures regarding liquidation and abandonments of railroads, the purpose of the National Historic Preservation Act will be thwarted and shippers will suffer continuing

disruptions in service as a result of the dispute between the P&LE and rail labor.

For all of the foregoing reasons, RLEA has satisfied the four criteria governing issuance of a stay, and the Commission should reconsider its Decision and should impose the requested stay.

#### B. Issuance Of Stay Is Required By §106 Of The National Historic Preservation Act

As was noted above, Section 106 of the NHPA expressly requires that the Commission consider the impact of this transaction on the historic structures owned by the P&LE prior to the approval of the lease. It is clear that this requirement can not be satisfied by after-the-fact consideration upon a petition for revocation and subsequent proceedings. Additionally, in this case, RLEA has demonstrated that there is substantial reason to believe that the integrity of the historic structures on the P&LE will not be preserved because the reduction in the work force planned by P&LE Railco will certainly result in a significant decrease in maintenance of those historic structures. Accordingly, the condition attached to the Commission's Order which prevents Railco from taking any action to jeopardize the historic structures is to no effect since it is not destruction of the structures which is at issue but continuation of necessary maintenance.

Thus, even if RLEA did not satisfy the four traditional criteria for issuance of a stay, in this case, a stay is mandated by §106 of the NHPA.

#### C. Even If The Commission Denies RLEA's Motion For Reconsideration It Should Amend Its Order To Require P&LE To Maintain Its Corporate Existence Pending ICC Consideration Of A Petition For Revocation

In its Decision the Commission stated that it would "require P&LE as a condition to effecting this transaction, to maintain its corporate existence until the Commission



has had opportunity to consider a petition for revocation filed within 30 days." Decision at 3. However, no such requirement is reflected in the Commission's Order. *Id.* at 4. Accordingly, even if RLEA's motion for reconsideration is denied the Commission Order should be amended to accord with its Decision.

### CONCLUSION

RLEA's memorandum has demonstrated that the Commission should reconsider its denial of the requested stay of effectiveness in the notices of exemption in this matter, and that the stay should be imposed. But in the event the motion for reconsideration is denied, the Commission should amend its Order to require P&LE to maintain its corporate existence pending the Commission's consideration of a petition for revocation of the exemption.

Respectfully submitted,

/s/ Richard S. Edelman  
John O'B. Clarke, Jr.  
Richard S. Edelman

HIGSAW & MAHONEY, P.C.  
Suite 210  
1050 17th Street, N.W.  
Washington, D.C. 20036  
(202) 296-8500

Date: October 2, 1987

### BEFORE THE INTERSTATE COMMERCE COMMISSION WASHINGTON, D.C.

#### Finance Docket No. 31121

P&LE RAILCO, INC.—EXEMPTION—ACQUISITION AND  
OPERATION—THE PITTSBURGH AND LAKE ERIE RAIL-  
ROAD COMPANY, and THE YOUNGSTOWN AND SOUTH-  
ERN RAILWAY COMPANY

#### Finance Docket No. 31122

CHICAGO WEST PULLMAN CORPORATION—CONTINU-  
ANCE IN CONTROL EXEMPTION—P&LE RAILCO, INC.  
AND—CONTROL EXEMPTION—THE PITTSBURGH, CHAR-  
TIERS AND YOUGHIOGHENY RAILWAY COMPANY

### PETITION FOR REVOCATION OF EXEMPTIONS

Pursuant to 49 U.S.C. §10505(d), the Railway Labor Executives' Association ("RLEA") petitions for revocation of the exemptions granted by the Commission in the above-captioned cases. RLEA submits that revocation of these exemptions is required because all of the circumstances indicate that Commission review of the proposed sale of the Pittsburgh & Lake Erie Railroad's rail lines, operating properties and certain other assets is "necessary to carry out the transportation policy of Section 10101a of [Title 49]." 49 U.S.C. §10505(a)(1).

Since the filing of its request for a stay of the effectiveness of the notices of exemption in these matters (denied on September 29, 1987), the RLEA and its attorneys and financial advisors have had the opportunity to analyze the economic aspects of the underlying transaction, as well as antecedent transactions involving the P&LE. RLEA submits that such analysis reveals that the proposed sale of the P&LE's rail lines, operating properties and certain other assets will render P&LE *insolvent* and that this transaction is in actuality a *liquidation* of P&LE, in an attempt to evade the Railroad Reorganization provisions of the Bankruptcy Code, 11 U.S.C. §1161, *et seq.* and abandonment proceedings by the Commission under 49 U.S.C. §§10903-10905. Moreover, this liquidation is being conducted in a manner which favors particular P&LE creditors to the detriment of others of its creditors, including P&LE's employees.

RLEA submits that this entire process and its results are so clearly contrary to various elements of the National Rail Transportation Policy that Commission review of this transaction is required and that the exemptions relating to this transaction must be revoked.

## DISCUSSION

### A. Economic Aspects Of The Underlying Transaction And Its Antecedents

#### 1. Economic Circumstances Of The Subject Transaction

In testimony presented in the United States District Court for the Western District of Pennsylvania, in an action relating to labor relations matters arising out of the subject transaction, Gordon E. Neuenschwander, President and Chief Executive Officer of the P&LE, stated that the purchase price for P&LE's rail lines, operating properties and other assets involved in the sale was approximately

\$70 million.<sup>1</sup> He further stated that, as a result of the transaction, P&LE will be left with approximately \$2 million in real property and 6,000 rail cars which could be liquidated for between \$30 and \$50 million. Tr. at 15-16. Thus, its total assets following the sale would be between \$102 million and \$122 million. However, Mr. Neuenschwander estimated the P&LE's current liabilities at \$124 million. Tr. at 16. Moreover, as of December 31, 1986, according to a financial statement filed with the Pennsylvania Public Utilities Commission, P&LE had total assets of \$189,000,000, total liabilities of \$168,830,000 and cumulative preferred stock of \$25,125,000. Thus, at the time, P&LE had a net negative capital of approximately \$4 million. Additionally, P&LE sustained a net operating loss of \$8,133,122 and an after tax loss of \$17,800,296.<sup>2</sup>

On the basis of this information RLEA submits that the P&LE was and is insolvent. Mr. Neuenschwander testified that he believes that P&LE is not currently insolvent (Tr. at 14) but admitted that as a result of the subject transaction P&LE would be rendered insolvent (Tr. at 16). In fact the proposed transaction would create a large gap between P&LE's assets and liabilities. As was noted above, as of December 31, 1986, P&LE had liabilities of \$168,830,000 while Mr. Neuenschwander claimed that currently P&LE's debt is approximately \$124 million (Tr. at 16). Under Mr. Neuenschwander's own appraisal, upon completion of the transaction the gap between P&LE's assets and liabilities will be between \$2 million and \$22

<sup>1</sup> See p. 15 of the Transcript of that testimony, a copy of which is included with RLEA's Petition to Reject Verified Notices of Exemption And Request For Stay Pending Ruling On Petition To Reject as Attachment 2. Citations to that transcript will be referred to herein as "Tr. at —".

<sup>2</sup> A copy of the financial statement filed by P&LE with the Pennsylvania Utilities Commission is included with RLEA's Petition To Reject Verified Notices Of Exemption And Request For Stay Pending Ruling On Petition To Reject as Attachment 1.

million; if P&LE has not actually reduced its debt from December 31, 1986 levels, the gap would be far larger.

## 2. Previous Transactions

### a. The 1979 Transaction

In May of 1979, PLECO, which was formed by several entrepreneurs and P&LE officers for the purpose of acquiring the P&LE, initiated a two-step leveraged buyout transaction in order to acquire exclusive ownership of P&LE (the "1979 Transaction"). The facts relating to that transaction are fully set forth, in detail, in *Bertram Field and Edward Fanucchi v. Allyn, et al.*, 457 A.2d 1089 (Ch. Ct. Del. 1983) in which two of the P&LE's shareholders challenged that transaction. PLECO purchased 92.6% of the common stock of the P&LE from Penn Central Transportation Corporation ("Penn Central") for approximately \$60 million or \$90.25 per share. As the second step of the 1979 Transaction, PLECO tendered for the remaining minority shares at \$115 per share, an amount exceeding the fair value of such stock. Pursuant to the tender offer and a statutory cash-out merger under Delaware law, PLECO acquired the remaining shares of P&LE from the minority shareholders at a price in excess of fair value.

PLECO effected the 1979 Transaction of P&LE with 100% financing, secured by the assets of P&LE. Initially, PLECO obtained a bridge loan of \$50 million from First National Bank of Boston ("FNBB"), secured by the stock of PLECO. Upon the acquisition of 100% of the stock of P&LE, PLECO arranged for P&LE to enter into a 10 year sale-leaseback of P&LE's unencumbered assets. P&LE received \$60 million from FNBB for which it was obligated for a period of 10 years to make rental payments of \$6 million annually with interest to FNBB. P&LE, upon receiving the \$60 million payment from FNBB, from the sale-leaseback arrangement, declared and paid a dividend of \$60 million to PLECO, its exclusive shareholder which,

in turn, applied that sum to repay FNBB for the bridge loan.

P&LE received nothing of value from the 1979 Transaction. Instead, virtually all of P&LE's capital was eliminated, having pledged most of its assets to finance the buyout for the benefit of PLECO and Penn Central. Whereas P&LE had approximately \$169.5 million in book value prior to the 1979 Transaction, it had \$15 million in book value remaining after its completion. One other result of all of these financial maneuvers was that several P&LE officers, including current P&LE President Neuenschwander, who purchased between 160 and 255 shares of PLECO at \$1 per share became owners of significant assets of the P&LE (e.g., Mr. Neuenschwander, who purchased 160 shares of PLECO for \$160 at its formation, became an 8.4% shareholder of the PLECO which owned the assets of the P&LE).

### b. The 1985 Transaction

In May 1985, because of a number of factors including continuing losses, P&LE was approximately \$60 million in arrears on its contractual debt obligations. P&LE entered into a debt reorganization plan with some of its creditors. As part of that transaction, the creditors involved extended the repayment period of outstanding debt, and received an issue of 10% cumulative preferred stock in exchange for accrued but unpaid interest on existing debt obligations. Said creditors were also granted the right to disapprove any sale, lease or transfer, or dissolution or liquidation of P&LE. See, *The Pittsburgh & Lake Erie Railroad Co.-Preferred Stock*, Finance Docket No. 30677, served August 2, 1985. RLEA believes that the evidence shows that P&LE was insolvent at the time of that transaction.

As part of the 1985 Transaction, P&LE's employees made a variety of concessions in order to support the railroad. Mr. Neuenschwander testified that one of the



labor organizations agreed to a reduction in the work week from five days to four days and other organizations agreed to reductions in wages. Neuenschwander Tr. at 21-22.

### c. The 1986 Transaction

In 1986, Beloit Corporation, as a majority shareholder of PLECO, sold all of its stock holdings to PLECO and other management shareholders on terms not publicly available. As a result of this transaction P&LE's officers and other individual shareholders owned all of the P&LE. RLEA believes that at the time of the 1986 Transaction, P&LE, as the principal asset of PLECO, was insolvent. RLEA believes that the assets of P&LE were further encumbered by the terms of the 1986 Transaction without fair consideration being paid to P&LE to the substantial detriment of its creditors.

### B. Cumulative Results Of The Various Transactions

The current owners of PLECO obtained their interests in the railroad through a highly leveraged buy-out of P&LE using P&LE's assets as collateral for their financing. In subsequent transactions, the capital of P&LE was used to maintain or increase control of PLECO.

P&LE suffered various financial setbacks in the last several years which resulted in a restructuring of its debt with the assumption of increased financial obligations and the successful negotiation of pay concessions from its employees. Citing continued bad fortune, PLECO now seeks to sell P&LE's rail lines, operating properties and certain of its assets. And it now seeks Commission sanction of the sale.

The subject transaction is effectively a liquidation of the P&LE; upon completion of the sale, its remaining assets will be approximately \$2 million in real property and 6,000 rail cars valued at between \$30 million and \$150 million. P&LE has admitted that the proposed transaction would render P&LE insolvent by between \$2 million and \$22

million. RLEA submits that the difference between assets and liabilities will be much greater. Additionally, in the hearings in the district court, Mr. Neuenschwander stated that the proceeds of the transaction will be distributed among 22 principal creditors. Those creditors will thereby receive preferential treatment of their claims to the detriment of P&LE's other creditors including its employees. And the owners of PLECO will have obtained a liquidation and abandonment of the P&LE without compliance with applicable procedures under the Bankruptcy Act and the Interstate Commerce Act.

As for the employees who made concessions to keep P&LE in operation, all of them will be released (Neuenschwander Tr. at 13). RLEA believes that P&LE's purchaser will only employ approximately 210 people.<sup>3</sup> Of course following distribution of the proceeds of the sale, there will not be sufficient assets for P&LE to pay its employees claims as creditors.

### C. Alternatives

RLEA recognizes that P&LE has had its financial difficulties; indeed as was noted above, P&LE's employees made concessions in order to help the P&LE out of its problems. However, there were, and are, alternatives to the sale to P&LE Railco, Inc. which could continue rail operations on P&LE's lines. RLEA submits for Commission consideration the Declaration of Brian M. Freeman, its financial advisor, in which he discusses various alternatives, including voluntary or involuntary reorganization (under Chapters 11 or 4 of the Federal Bankruptcy Act) and the purchase of the P&LE through an employee stock ownership plan. Freeman Declaration para. 4. Mr. Freeman further explains how the employee stock ownership

<sup>3</sup> See Declaration of William E. LaRue, para. 4, which was included in RLEA's Petition To Reject Verified Notices Of Exemption And Request For Stay Pending Ruling On Petition To Reject as Attachment 3.

plan offered by the RLEA would be more likely to maintain the viability of the P&LE. Freeman Declaration para. 4.a.ii. Thus, although is in financial difficulty, there are alternatives to the sale of P&LE to P&LE Railco, Inc.

### ARGUMENT

The exemptions from prior Commission approval of the subject transactions under 49 U.S.C. §10901 were obtained pursuant to 49 U.S.C. §10505. However, §10505(a)(1) permits an exemption only when regulation is not necessary to carry out the transportation policy of Section 10101a. RLEA submits that the information submitted in this petition demonstrates that Commission review of this transaction is necessary to carry out the rail transportation policies relating to: fostering of "sound economic conditions in transportation" (§10101a(5)), encouraging "honest and efficient management of railroads" (§10101a(10)), encouraging "fair wages and suitable working conditions" (§10101a(12)) and ensuring the availability of accurate cost information in regulatory proceedings (§10101a(14)). Accordingly, the exemptions should be revoked and the Commission should initiate proceedings on this matter.

RLEA has demonstrated that the subject transaction is merely the last of a series of transactions in which the owners of PLECO first obtained control of the P&LE by progressively utilizing the assets of the P&LE and that its owners now seek to liquidate the P&LE in a manner which would prefer 22 of its creditors. It is clear that the effect of this transaction is to liquidate the P&LE without proceedings under the Railroad Reorganization provisions of the Bankruptcy Code, 11 U.S.C. §1161, *et seq.* or proceedings before the Commission for abandonment pursuant to 49 U.S.C. §§10903-10905. Commission review of this transaction is necessary to prevent circumvention of these two processes which are designed to protect creditors, employees and the public. RLEA submits that the results of the subject transaction are inconsistent with the trans-

portation policies concerning sound economic conditions in transportation, honest and efficient management of railroads and the availability of accurate cost information in regulatory proceedings, accordingly, Commission review under §10901 is therefore necessary.

It is also apparent that completion of this transaction will do great injury to P&LE's employees who made concessions to keep the railroad operating. This would be inconsistent with the transportation policy concerning maintenance of fair wages and suitable working conditions. Furthermore, should the commission permit this transaction to go forward it will send a message to rail labor that will certainly diminish the willingness of employees to make concessions in the future, which result would not promote the National Rail Transportation Policy.

Moreover, Commission review of this entire matter is also necessary in order that it may consider all of the alternatives to the sale to P&LE Railco, Inc. RLEA has previously advised the Commission that it has offered P&LE an alternative disposition of its rail lines and assets by arranging for a purchase through an employee stock ownership plan. *See* Declaration of William E. LaRue, para. 6, which is attached to RLEA's Petition to Reject Verified Notices Of Exemption And Request For Stay Pending Ruling On Petition to Reject. In a declaration in support of this petition, Brian M. Freeman, financial advisor to the RLEA, discusses alternatives to the proposed sale which are available, including purchase by its employees through an employee stock ownership plan, the financial problems which would occur if the transaction and distribution of the proceeds or the sale are completed, the difficulty of exploring other alternatives once the sale and distribution of the proceeds of the sale are completed and how the RLEA's offer would create a railroad which is more financially viable than P&LE, Railco, Inc. The alternatives should be explored by the Commission before revocation will be rendered in effective.

**CONCLUSION**

Accordingly, for all of these reasons, the exemptions in these matters should be revoked and the Commission should review this entire matter.

Respectfully submitted,

/s/ Richard S. Edelman  
John O'B. Clarke, Jr.  
Richard S. Edelman  
HIGSAW & MAHONEY, P.C.  
Suite 210  
1050 17th Street, N.W.  
Washington, D.C. 20036  
(202) 296-8500

Date: October 2, 1987

**BEFORE THE  
INTERSTATE COMMERCE COMMISSION  
WASHINGTON, D.C.**

**Finance Docket  
No. 31121**

P&LE RAILCO, INC.—EXEMPTION—ACQUISITION AND  
OPERATION—THE PITTSBURGH AND LAKE ERIE RAIL-  
ROAD COMPANY, and THE YOUNGSTOWN AND SOUTH-  
ERN RAILWAY COMPANY

**Finance Docket  
No. 31122**

CHICAGO WEST PULLMAN CORPORATION—CONTINU-  
ANCE IN CONTROL EXEMPTION—P&LE RAILCO, INC.  
AND—CONTROL EXEMPTION—THE PITTSBURGH, CHAR-  
TIERS AND YOUGHIOGHENY RAILWAY COMPANY

**DECLARATION OF BRIAN M. FREEMAN**

District of Columbia                    )                   ss:

BRIAN M. FREEMAN, being duly sworn, deposes and  
says:

1. I am the Chairman of Brian M. Freeman & Co., Inc.  
("Freeman & Co."), which since 1983 has served as fi-  
nancial advisor to employee benefit plans, fiduciaries and  
numerous other entities. A more complete description of  
Freeman & Co.'s qualifications and experience is contained  
in Exhibit 1 hereto.

2. I received a B.A. in Economics *summa cum laude* in  
1967 from Rutgers University, a J.D. *cum laude* in 1970



from Harvard Law School, an L.L.M. in Taxation in 1972 from New York University, and an M.B.A. in 1975 from Harvard Business School. I was a tax associate at a major law firm in New York City from 1971 to 1973. I served in the United States Department of the Treasury from 1976 to 1981, as Executive Director and Secretary to the Chrysler Corporation Loan Board, Secretary to the Emergency Loan Guarantee Board, Deputy for Corporate Finance and Special Projects, and Financial Counselor to the General Counsel. Since leaving government service, I have been extensively involved in financial transactions and negotiations in the transportation industry, including transactions involving Eastern Air Lines, Republic Airlines, Western Airlines, Trans World Airlines, and Consolidated Rail Corporation. A fuller description of my background and experience is also contained in Exhibit 1.

3. This firm is the financial advisor to the Railway Labor Executives' Association ("RLEA") with respect to a number of matters, including the proposed acquisition and operation (the "Proposed Acquisition") of The Pittsburgh and Lake Erie Railroad Company, and the Youngstown and Southern Railway Company (collectively referred to as the "P&LE") by P&LE Railco, a newly incorporated subsidiary of Chicago West Pullman Corporation ("CWP"). As such, we are generally familiar with the operations and financial status of the P&LE, and the Proposed Acquisition by which P&LE assets would be acquired by P&LE Railco. In fact, on behalf of the RLEA for the benefit of the employees, we submitted a proposal to purchase the P&LE for the employees through an ESOP ("ESOP Proposal"), which was rejected by the P&LE.

4. In my opinion and best judgment based upon the facts that are in the record and upon information and belief:

a. The Proposed Acquisition is not necessarily the only possible transaction for the P&LE to continue operations and increase its viability.

There are alternative transactions which are more likely to provide greater continued rail service for a longer period. These other transactions include, but are not limited to (1) a restructuring by the P&LE of both its creditor obligations and its labor contract, or (2) an employee purchase of the railroad through an ESOP.

#### i. Restructuring

Such a restructuring is implementable and is a better alternative. The creditor claims could be restructured on a consensual basis through negotiation or on an involuntary basis through a Chapter 11 or Chapter 4 proceeding under The Federal Bankruptcy Act. The labor contracts could be restructured on a voluntary basis; this would be achievable if made available as an alternative, on the same rationale which resulted in the RLEA's authorizing the ESOP proposal that we made for it.

A restructuring would have been a better alternative because it would have made greater resources available for ongoing operations. Resources to be transferred to the P&LE creditors under the Proposed Acquisition would remain with the company and new obligations created by the Proposed Acquisition would be avoided. The sale to P&LE Railco is fundamentally inequitable and at the expense of the employees.

#### ii. ESOP

Likewise, the ESOP Proposal, which was made under the authority of the RLEA on behalf of the P&LE's employees, is even more likely to maintain short- and long-term viability of the P&LE at the same or at a higher price than the Proposed Acquisition by P&LE Railco standing alone and/or in combination with a restructuring for a number of reasons.

a. Cash flow would be enhanced by the nature of the EOPS structure:

(1) The ability to repay acquisition debt in pre-tax dollars rather than after-tax dollars.

(2) A reduced interest rate available to ESOP acquisition debt as a result of the tax exemption for half of the interest earned by financial institutions on loans to ESOPs.

(3) The continued availability of the net operating loss carryovers ("NOLs") of at least \$90 million in a sale to an ESOP. NOLs are more likely to be foregone or of limited availability in the acquisition of the enterprise or its assets by any other company or investor such as P&LE Railco.

b. Employees require a lower return on their investment than outside investors because the ESOP's objectives would include the protection of jobs to the extent economically justified after other actions are taken.

c. Potential liabilities from employee and other claims arising from the Proposed Acquisition would be greatly reduced.

d. Employees would have greater incentive to assure viability through wage rate reductions, work rule changes, and other actions since they would own the company.

5. If the Proposed Acquisition is implemented, the sale can not be undone as a procedural matter; thus, its implementation would preclude other alternatives including a return to the status quo even if the exemption can be revoked.

a. If the \$70 million proceeds from completion of the Proposed Acquisition are disbursed to the P&LE creditors, it would be legally difficult, and practically impossible, to retrieve the funds disbursed in a manner that permits the P&LE to be restored to the status quo.

b. Furthermore, substantially all of the \$70 million purchase price appears that it would be financed initially or ultimately by P&LE Railco borrowing against the acquired

assets of the P&LE. The existence of these liens or, if none, the related creditor's claims against the acquired assets, would preclude or impair implementation of any other transaction including an ESOP buyout.

c. There is nothing in the formal record to support the assertion that the P&LE actually would be liquidated absent immediate approval of the Proposed Acquisition. Moreover, if the Proposed Acquisition is stayed, the P&LE could consider other alternatives, including the ESOP Proposal. The period of the stay would be adequate for such consideration, and would likely occur in any case since the P&LE would have to obtain ICC permission to cease railroad operations, if it decided to cease operations and liquidate, a process that could take several months. The agreement employees could assure continuation of those operations thereafter.

d. The P&LE would not be viable after the Proposed Acquisition based on our analysis and on its own President's statements. The Proposed Acquisition will create employee contingent liabilities and other claims, including creditor fraudulent conveyance claims, further adding to the liabilities of the P&LE. Since the P&LE would have insufficient assets to satisfy its creditor liabilities after the Proposed Acquisition, the railroad most likely will seek or will be forced into a bankruptcy proceeding and/or a liquidation.

f. The primary benefit of the Proposed Acquisition, therefore, is not continued rail service but the aggrandizement of certain creditors of P&LE. The primary and only economic justification and potential benefits of the Proposed Acquisition derive primarily and substantially, and perhaps completely, from circumventing the P&LE's existing obligations to its employees under its labor contracts in order to prefer a class of approximately 22 creditors over the employees' protection agreements. Circumventing P&LE's labor contracts and protection

agreements provides substantially the only basis for the purchase price, the proceeds of which will be applied to pay off certain creditors. Other economic benefits, if any, are speculative, marginal, and achievable either independently or with the cooperation that the agreement employees could provide even if the Proposed Acquisition does not occur.

g. There were and remain other additional alternatives available which are more consistent with the public interest and the employee interests, which do not raise the potential risks and policy problems that the Proposed Acquisition has created. The primary alternatives are restructuring and the proposed RLEA employee transaction, both of which would increase long-term prospects for continued operations. In particular, there are strong arguments in favor of the ESOP, because the employees would accept a lower rate of return than normal sources of venture capital, and the would make greater concessions.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on October 2, 1987.

/s/ Brian M. Freeman  
Brian M. Freeman

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT  
OF PENNSYLVANIA

Civil Action  
No. 87-1745

(Judge Bloch)

RAILWAY LABOR EXECUTIVES' ASSOCIATION,  
*Plaintiff,*

v.

PITTSBURGH & LAKE ERIE RAILROAD CO.,  
*Defendant,*

DECLARATION OF WILLIAM E. LaRUE

William E. LaRue hereby declares under penalty of perjury pursuant to 28 U.S.C. §1746 that the following is true and correct:

1. Declarant is a Vice President of the Brotherhood of Maintenance of Way Employees (BMWE) and has held that elective position since June 1, 1980. At all times material hereto, declarant was, and is still, assigned to represent the brotherhood and its members' interests in connection with railroads in the Northeast section of this Country, including the interests of those members who are employed by the Pittsburgh & Lake Erie Railroad Company (P&LE). Declarant is also the co-spokesman for the Railway Labor Executives' Association's (RLEA) coordinating committee for rail labor's strike against the P&LE. As a result of performing his duties for the BMWE and RLEA, Declarant is personally familiar with the facts set forth in this Declaration.



2. Following the first injunction hearing, the P&LE met with rail labor on September 18 and 19, 1987, to "discuss" the effects of the sale on P&LE employees. At the first meeting, representatives for the P&LE stated that RLEA's attorney had mentioned that the unions had a proposal to buy the P&LE and they wanted to know if that was true, and if true, they would like to see that proposal. Declarant contacted RLEA's officials and on September 20, 1987 was furnished with an ESOP proposal which Declarant understands was received by the P&LE at least by September 21. At the meetings on September 18 and 19, rail labor sought to negotiate about the impact of the sale on P&LE employees, but the P&LE representatives stated that they were more interested in the ESOP proposal. However, the P&LE did make a proposal similar to that described in paragraph 6 below.

3. On September 19, 1987, Mr. James D. Peters, P&LE's Director of Labor Relations, informed rail labor that the P&LE had not obtained an extension of the sale date. Rail labor then recommenced its strike, and the P&LE cancelled the meeting which had been scheduled for September 20.

4. In light of the P&LE's representations in Court on September 21 that it was willing to meet over the effects of the sale on employees, Declarant caused a telegram to be sent to Mr. Peters and to Mr. Gordon Neuenschwander informing them that Rail Labor was willing to meet at any time; Declarant also asked whether the September 25 meeting would be held. A true and accurate copy of that telegram is attached hereto as LaRue Exhibit No. 1.

5. The carrier responded and the parties met on September 23. At that meeting, Declarant asked about the P&LE's response to the ESOP proposal, and the P&LE replied by reading Mr. Neuenschwander's letter of September 22, 1987 rejecting the ESOP proposal. That letter was subsequently

furnished to Declarant; a true and accurate copy of that letter is attached hereto as LaRue Exhibit No. 2. Rail labor responded by proposing a separation allowance for all employees to be affected by the sale. The meeting recessed with rail labor agreeing to submit a written proposal as soon as possible; also, a further meeting was scheduled for September 25.

6. At about 4:00 p.m. on September 24, Declarant caused a written proposal to be submitted to the P&LE and at 10:00 a.m. on September 25, the parties met to discuss that proposal. At that meeting, Mr. Peters said that he had no authority to agree to the kind of money involved in rail labor's proposal and, when asked what "kind of money" he did have authority to propose, he replied that it was so small, it wasn't worth talking about. Mr. Peters, however, proposed that the P&LE was willing: (1) to pay unused vacation for 1987 and 1988, as rail labor submits it is required to do by contract; (2) to continue the Health and Welfare insurance payments for three months, again as rail labor submits its current obligations require; (3) to help employees obtain instructions on how to obtain employment; (4) to attempt to establish a medical insurance plan which would be paid by the employees; (5) to continue to provide employment verification as it has done in the past; and (6) to pay the employees who do not receive P&LE Railco jobs pay for the five (5) remaining holidays in 1987. That proposal was similar to that advanced on September 18, but with a few modifications.

7. Declarant, in an attempt to find a basis upon which meaningful negotiations could begin, asked the union representatives to describe to the P&LE various stabilization agreements (agreements which require continued employment or its equivalent in pay) to which the P&LE is a party, as well as similar agreements or arrangements on other carriers. When a twenty-five thousand (\$25,000) dollar buyout was suggested as a way to resolve the existing dispute, Mr. Peters

replied that he did not have authority to do anymore than what the P&LE had proposed and that it would serve no purpose even to discuss other concepts. Declarant replied by asking that the carrier's proposal be placed in writing and the meeting recessed around 12:00 to 12:30 p.m., with the talks to resume at 6:00 p.m. that day (i.e., September 25).

8. Around 4:00 to 5:00 p.m., the carrier submitted its written proposal, but at 5:30 p.m. Mr. Peters called Declarant and stated that the carrier wished to postpone the 6:00 p.m. meeting. Declarant declined to adjourn the meeting as Mr. Peters requested, but agreed to postpone it for thirty (30) minutes. At 6:30 Mr. Peters again called Declarant and stated that the carrier was waiting to see what the Interstate Commerce Commission (ICC) did with a pending request by RLEA for a stay of the ICC exemption which would enable P&LE Railco to purchase the P&LE's assets. (That stay request was denied at 10:00 p.m. on September 25.) At 7:00 p.m., Mr. Peters called Declarant again, but this time cancelled the meeting. Mr. Peters stated that there was no reason to meet since the ICC had not ruled on the stay. As Mr. Peters explained, the ICC's ruling, in the P&LE view, would have a bearing on future meetings with rail labor.

9. On September 28, Declarant was informed by a news reporter that the P&LE was making a new offer, and Declarant called Mr. Peters to see if that were true. Mr. Peters informed Declarant that there was no new proposal and no further meetings were scheduled. On September 30, Declarant again called Mr. Peters and asked if the carrier was willing to meet; Mr. Peters replied he would have to get back to Declarant after he checked with his superiors. Two days later, on October 2, Declarant again called Mr. Peters and asked him several questions, including whether the carrier was willing to meet. Mr. Peters stated that he was not sure whether there would be any further meetings. Around 3:00 p.m. on October 2, Declarant caused a telegram to be

sent to the P&LE reiterating that the unions were willing to meet with the P&LE at any time.

10. Around 9 or 10 a.m. on October 5, Declarant and Mr. Peters spoke by phone about one of the questions which Declarant had raised on October 2; during that conversation, Mr. Peters did not mention that the carrier had any plans to meet with rail labor. At 6:00 p.m. on October 5, Declarant received a telegram from Mr. Peters acknowledging Declarant's telegram of October 2 and offering to meet at 10:00 a.m. on October 7. A true and accurate copy of that P&LE telegram is attached hereto as LaRue Exhibit 3. On October 6, Declarant advised Mr. Peters that rail labor was willing to meet on the 7th.

11. Declarant has been involved in negotiating rail labor contracts since the mid 1970's and states that in his opinion the P&LE has not made, and is not making, a reasonable or good faith effort to resolve the dispute over the impact of the sale on P&LE employees. Declarant's opinion is based on his experience as a negotiator and on the fact that it is not acting in good faith to send a person in to negotiate who does not have the authority to negotiate anything other than what the carrier first offered. This is especially true here, where this sale will have such a drastic impact on all existing working conditions and agreements. Declarant can, and, indeed, rail labor has, placed numerous proposals on the bargaining table in an attempt to resolve this dispute, but Mr. Peters has replied that he does not have the authority to discuss anything other than what was first proposed by the P&LE. In Declarant's opinion, that is not making reasonable efforts to settle this dispute by negotiations.

I DECLARE UNDER PENALTY OF PERJURY THAT  
THE FOREGOING IS TRUE AND CORRECT.

Executed on October 7, 1987.

/s/ William E. LaRue  
WILLIAM E. LaRUE



## WESTERN UNION MAILGRAM

BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYEES  
ATTN W LARUE  
342 OLIVIA ST 2 FLOOR  
MCKEES ROCKS PA 15136

THIS IS A CONFIRMATION COPY OF THE FOLLOWING  
MESSAGE:

4123311166 FRB TDMT MCKEES ROCKS PA 63 09-21 0858P  
EST  
PMS J D PETERS DIRECTOR LABOR RELATIONS RPT DLY  
MGM, DLR  
PITTSBURGH AND LAKE ERIE RAILROAD CO COM-  
MERCE CT 4 STATION SQ  
PITTSBURGH PA 15219

THIS IS TO NOTIFY YOU THAT THE 14 RLEA UNIONS  
ARE PREPARED TO MEET AT ANY TIME WITH A REA-  
SONABLE NOTICE. FURTHER PLEASE ADVISE IF YOU  
ARE STILL INTENDING TO MEET ON FRIDAY SEPTEM-  
BER 25 1987 AT THE INTERNATIONAL HOST AT PITTS-  
BURGH AIRPORT AT 10:00 AM. KINDLY ADVISE WILLIAM  
LARUE SPOKESPERSON RLEA COORDINATING COMMIT-  
TEE 342 OLIVIA STREET 2 FLOOR MCKEES ROCKS PA  
15136

WILLIAM LARUE  
342 OLIVIA ST 2 FLOOR  
MCKEES ROCKS PA 15136

20:56 EST

MGMCOMP

## WESTERN UNION MAILGRAM

B MAINTENANCE  
342 OLIVIA ST 2 FLOOR  
MCKEES ROCK PA 15136

THIS IS A CONFIRMATION COPY OF THE FOLLOWING  
MESSAGE:

4123311166 FRB TDMT MC KEES ROCK PA 61 09-21 0847P  
EST  
PMS GORDON E NEUENSCHWANDER, PRESIDENT PITTS-  
BURGH AND LAKE ERIE  
RAILROAD CO, DLR  
COMMRCE COURT 4 STATION SQUARE  
PITTSBURGH PA 15219

THIS IS TO NOTIFY YOU THAT THE RRLEA UNIONS ARE  
PREPARED TO MEET AT ANY TIME WITH A REASON-  
ABLE NOTICE FURTHER PLEASE ADVISE IF YOU ARE  
STILL INTENDING TO NEGOTIATE ON FRIDAY SEPTEM-  
BER THE 25 1987 AT THE INTERNATIONAL HOST AT  
PITTSBURGH AIRPORT AT 10AM KINDLY CONTACT WIL-  
LIAM LARUE SPOKE PERSON 342 OLIVIA ST SECOND  
FLOOR MCKEES ROCK PA PHONE 412-3311165

WILLIAM LARUE SPOKE PERSON RRLEA COORDINAT-  
ING COMMITTEE  
342 OLIVIA ST 2 FLOOR  
MCKEES ROCK PA 15136

20:45 EST

MGMCOMP



THE PITTSBURGH & LAKE ERIE  
RAILROAD COMPANY

September 22, 1987

Mr. Brian M. Freeman  
Brian M. Freeman & Co., Inc.  
1777 F Street, N.W.  
Washington, D. C. 20006

Dear Mr. Freeman:

Yesterday morning I received your proposal on behalf of the RLEA dated September 19, 1987 for an Employee purchase of the rail operations of the P&LE. While your proposal might have received serious consideration under other circumstances, the P&LE is not in a position to entertain your proposal or enter into any negotiations concerning it because P&LE is bound by contract to sell its rail lines and other operating assets to a newly-formed subsidiary of Chicago West Pullman. Under that contract the purchaser has the right to acquire the same rail lines and other operating assets of the P&LE which are the subject of your proposal. You must appreciate that the P&LE intends to honor its agreements involving such an important transaction.

Thank you for your interest in this matter.

Very truly yours,

/s/ Gordon E. Neuenschwander

WESTERN UNION MAILGRAM

WILLIAM LARUE, CHAIRMAN, RLEA COORDINATING  
COMMITTEE  
342 OLIVIA ST 2ND FLOOR  
MCKEES ROCKS PA 15136

THIS IS A CONFIRMATION COPY OF A TELEGRAM ADDRESSED TO YOU:

THIS WILL ACKNOWLEDGE RECEIPT OF YOUR TELEGRAM DATED OCTOBER 2, 1987.

I DISAGREE WITH YOUR CHARACTERIZATION OF THE EVENTS SUBSEQUENT TO OUR LAST MEETING ON SEPTEMBER 25, 1987. OUR JOINT MEETINGS ON THE EFFECTS OF THE SALE OF PNLE'S ASSETS ON THE EMPLOYEE WERE RECESSED ON SEPTEMBER 25, 1987 PENDING RECEIPT OF THE ICC DECISION ON PNLE-RAILCO'S FILING FOR EXEMPTION. UPON RECEIPT OF THE ICC'S SEPTEMBER 29TH DECISION CARRIER WAS STUDYING IT'S EFFECT ON OUR MEETINGS. WE SUBSEQUENTLY LEARNED THAT CWP WAS MEETING WITH RLEA AND FELT THAT FURTHER MEETINGS SHOULD BE DELAYED PENDING THE OUTCOME OF THE CWP-RLEA MEETING.

SINCE YOU APPARENTLY DESIRE TO CONTINUE OUR MEETINGS REGARDLESS OF THE OUTCOME OF THE CWP-RLEA MEETING WE HAVE ARRANGED TO MEET WITH YOU AT 10AM ON WEDNESDAY, OCTOBER 7, 1987 IN THE HUNT ROOM, DAYS INN-REDWOOD, BANKSVILLE ROAD PITTSBURGH PA. PLEASE ADVISE THAT YOU WILL ATTEND.

JAMES D PETERS - DIRECTOR LABOR RELATIONS  
PITTSBURGH AND LAKE ERIE RAILROAD  
COMMERCE CT 4 STATION SQUARE  
PITTSBURGH PA 15219  
COMMERCE CT 4 STATION SQUARE

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 87-1745

RAILWAY LABOR EXECUTIVES' ASSOCIATION,  
*Plaintiff,*

v.

PITTSBURGH AND LAKE ERIE RAILROAD COMPANY,  
*Defendant.*

THIRD SUPPLEMENTAL AFFIDAVIT  
OF JAMES D. PETERS

I, James D. Peters, being duly sworn on oath, depose and state as follows:

1. I am Director, Labor Relations, for The Pittsburgh and Lake Erie Railroad Company ("P&LE"). In this position, I have participated in meetings with P&LE's unions concerning the effects of the sale of P&LE's rail assets.
2. I have read the Declaration of William E. LaRue in support of the Railway Labor Executives' Association ("RLEA") Opposition to P&LE's Renewed Motion for a Temporary Restraining Order and Preliminary Injunction. The purpose of this supplemental affidavit is to correct serious omissions and errors in Mr. LaRue's characterizations of meetings between P&LE and representatives of its unions.
3. As Mr. LaRue states, P&LE met with rail labor on September 18 and 19, 1987 to discuss the sale. Contrary to his representation, P&LE was not interested in a union proposal to purchase the P&LE through an ESOP. I understood RLEA's counsel to have previously stated that the unions had a proposal to "save" the P&LE. I simply asked what that proposal was and was told that it was

an ESOP proposal for employee ownership of the P&LE. As Mr. LaRue admits, P&LE stated it was willing to address certain effects of the sale.

4. P&LE and union representatives next met on September 23, 1987 to address the effects of the sale. Mr. LaRue fails to note that at that meeting P&LE presented a proposal to address the effects of the sale.

5. P&LE's unions submitted a written effects proposal on September 24, 1987. A true and correct copy of this proposal is attached as Exhibit 1. This document proposed, inter alia, a \$45,000 per employee severance allowance for each employee on P&LE's rosters, which would include employees who have been on furlough for as long as five years. P&LE currently has approximately 1,600 unionized employees on its rosters, of whom approximately 650 are active. This feature alone of the unions' proposal would cost \$72 million, or more than the sales price for P&LE's rail assets.

6. The meeting on effects was continued on September 25, 1987. At that meeting, I did not state that the dollar amount of severance allowances I was authorized to propose "was so small, it wasn't worth talking about." (LaRue Declaration at paragraph 6). I stated that the amount I may be able to get authority for would probably be considered insignificant compared with the \$45,000 per employee they had then proposed.

7. Contrary to Mr. LaRue's statement (paragraph 7), I never understood the union group to propose a \$25,000 per person buy-out at the September 25 meeting. One union did state its position that it was entitled to \$25,000 per person severance under existing agreements. However, when I asked whether the statements by the individual unions referenced by Mr. LaRue could be in the form of written proposals, I was told that there were no individual proposals, only the group proposal of \$45,000 per employee on the rosters.

8. P&LE and the unions agreed that the September 25, 1987 talks were to be recessed until 6:00 P.M. that day, in anticipation of action by the Interstate Commerce Commission ("ICC") on RLEA's request to stay the sale. When no ICC action was forthcoming by that evening, I told Mr. LaRue I did not see any point in reconvening until we knew what action the ICC was going to take on RLEA's petitions. He said "okay".

9. P&LE and the union group next met on October 7, 1987. A true and correct copy of P&LE's telegram of October 5, 1987 arranging that meeting is attached as Exhibit 2. P&LE did not suggest an earlier meeting because the written ICC order had only been issued September 29, 1987, P&LE understood RLEA was meeting with the purchaser on October 2, 1987, and P&LE was still considering how it could improve its last proposal. I did not tell Mr. LaRue that I was uncertain there would be further meetings with P&LE; I told him on October 2, 1987 that P&LE was not prepared to meet at that time. The October 2 telegram referenced by Mr. LaRue (paragraph 9) was not delivered to P&LE's offices until October 3, a Saturday, and I was unaware of it until the following Monday, October 5, 1987.

10. At the October 7, 1987 meeting between P&LE and its unions, P&LE submitted a revised effects proposal. A true and correct copy of this proposal is attached as Exhibit 3. The parties agreed at this meeting to meet again on October 9, 1987.

11. Mr. LaRue's claim of bad faith bargaining by P&LE is unwarranted. P&LE has met and continues to meet with its unions on the effects issue. Both sides have traded proposals and made modifications to them. While Mr. LaRue undoubtedly would like to see P&LE substantially increase its proposal, P&LE's financial position, which RLEA itself concedes is precarious, does not permit this.

/s/ J. D. Peters  
J. D. Peters

Sworn to and subscribed before me, a Notary Public in and for the County of Allegheny, PA, this 8th day of October, 1987.

/s/ John D. Hartman



RLEA Headquarters  
 342 Olivia Street  
 Second Floor  
 McKeesrock, Pennsylvania  
 15136  
 September 24, 1987  
 Phone 331-1165

J. D. Peters  
 Director Labor Relations  
 P&LE Railroad

G. E. Neuenschwander  
 President  
 P&LE Railroad

Dear Sirs:

Attached is our proposal as discussed at our meeting of September 23, 1987.

Please also be advised that our offer for an employee buyout of the P&LE and the Y&S is still open for discussion at tomorrow mornings meeting.

Sincerely,

/s/ William E. LaRue  
 William E. LaRue  
 Spokesman for the  
 RLEA Coordinating Committee

**MEMORANDUM OF AGREEMENT BETWEEN THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY AND THE EMPLOYEES REPRESENTED BY THE:**

International Association of Machinists & Aerospace Workers

Brotherhood of Locomotive Engineers

American Railway & Airway Supervisors Association

Brotherhood of Railroad Signalmen

International Brotherhood of Boilermakers & Blacksmiths

International Brotherhood of Firemen & Oilers

American Train Dispatchers Association

Sheet Metal Workers' International Association

International Brotherhood of Electrical Workers

Brotherhood of Maintenance of Way Employees

Transport Workers Union of America

Transportation Communication International Union

United Transportation Union

United Transportation Union - Yardmasters Department

**IT IS AGREED:**

*Article I* - Effective with the date of September 25, 87 an initial offer of \$45,000 lump sum separation allowance will be made to all employees on a Roster represented by the above listed unions. Subject to normal deductions plus 17 months union dues.

*Article II* - All employees will have their choice to either take the lump sum or take a monthly allowance of \$1400 per month and travelers GA-23000 coverage. Allowance to be paid on a daily rate of \$64.62 to apply to the first 15 days of each month, for 5 years, subject to normal deductions plus union dues. Monthly allowance will be transferred to family or estate, (whatever is applicable) in the event of employees death during 5 year period. Monies for the 5 year period furlough allowance will be placed in a guarantee account.

*Article III* - All employees previously covered by GA 46000 will continue to have coverage continued in full force and effect.

Signed this 25th date of September 1987.

# **AFFADAVIT OF R. E. SMITH**

State of New Mexico

County of Bernalillo

The undersigned, being dully sworn according to law, affirms the following facts to the best of his knowledge, information, or belief:

1. I am President of Chicago West Pullman Transportation Corporation ("CWPT").
2. CWPT representatives have met at least four times and have had numerous telephone calls with representatives of the United Transportation Union to negotiate a collective bargaining agreement to be effective the first day CWPT assumes operation of the Pittsburgh & Lake Erie Railroad ("PLE"). An additional meeting is scheduled for October 9, 1987.
3. CWPT representatives have met once and have had several telephone calls with representatives of the Railway Labor Executives Association to negotiate a collective bargaining agreement for non-operating employees to be effective the first day CWPT assumes operation of the PLE. An additional meeting is scheduled for October 8, 1987.

/s/ R. E. Smith

R. E. Smith

Subscribed and sworn before me this 6th day of October, 1987.

/s/ Valerie Davenport

Notary Public

My commission expires March 6, 1989.

**EXCERPTS FROM TRANSCRIPT OF HEARING ON  
TEMPORARY RESTRAINING ORDER**

[3] (Whereupon, the following proceedings were held on October 8, 1987, beginning at 10:00 a.m., United States District Court, Pittsburgh, Pennsylvania, before the Honorable Alan Bloch.)

THE COURT: This is the time we have set for a hearing on the renewed motion for a temporary restraining order filed by the defendant, Pittsburgh & Lake Erie Railroad, in the matter filed at Civil No. 87-1745.

The circumstances concerning this dispute have changed significantly since the court denied P&LE's request for a TRO on September 21. There is now an exemption from the requirements of the Interstate Commerce Act in effect pursuant to 49 U.S.C., 10505, 49 C.F.R., 1150.31 and the Interstate Commerce Commission's decision in ex parte 392.

That exemption relieves P&LE of the obligation to provide labor protective conditions in connection with the sale of its assets to P&LE Railco, at least until such time as the ICC grants a petition to revoke the exemption.

P&LE, of course, has the burden in this proceeding of demonstrating a likelihood of success on the merits and irreparable harm. It appears to the court that the issue of success on the merits in this case is purely a matter of law. P&LE's counterclaim asserts that the strike by RLEA is illegal because it is in violation of the Interstate Commerce [4] Act.

At the time of the earlier hearing in this matter, the ICC exemption had not yet become effective and, therefore, there was no conflict with ICC authority by the strike. Now, however, there is a conflict. The grant of the ex parte 392 exemption relieves P&LE of the obligation to negotiate with the union concerning the effect of the sale on the employers.

Therefore, the court is holding as a matter of law that the strike is illegal because it tends to negate the ICC's determination that labor protective provisions are not appropriate in transactions such as the sale at issue here. And, since the ICC exemption has relieved P&LE of the duty to negotiate concerning the effects of its sale, P&LE is not in violation of Section 8 of the Norris-LaGuardia Act.

The court is persuaded by the reasoning of the Eighth Circuit in *Missouri Pacific Railroad Company versus United Transportation Union*, 782 F. 2D 107, an Eighth Circuit decision in 1986 on which certificate was denied. There, as in this case, the ICC had determined that labor protective provisions would not be imposed as a condition of the transaction at issue. Under such circumstances, allowing a strike to continue would be equivalent to granting the union free rein to take actions for the purpose and with the effect of frustrating the ICC's ruling.

As the parties have pointed out, transactions such [5] as the consolidation proceeding at issue in the *Missouri Pacific* case are governed by another portion of the ICC Act than that which applies to this case. Consolidation transactions are exempted from the application of all other laws, including the Railway Labor Act's labor protective provisions, pursuant to Section 11341 of the Act.

The Eighth Circuit did not rely upon Section 11341 in reaching its decision, however. Its decision was based on the conclusion that allowing a strike over the issue of labor protective provisions to continue where the ICC has determined none are required would directly undermine the ICC's authority, as well as policies contained in the Interstate Commerce Act concerning exemption of transactions from such requirements.

In addition, it is unclear whether P&LE has the power to provide the type of labor protective conditions which RLEA is demanding. The court is not aware of any legal



authority which would support the union's demand that it be given what appears to be, in effect, a right of first refusal concerning the sale of P&LE's assets, particularly where, as here, P&LE already has entered into an agreement to sell those assets to another buyer.

With respect to the other types of labor protection which RLEA is seeking, it is not clear to the court whether it would be P&LE or the buyer which ordinarily would [6] be required to make the concessions the union is seeking. It would appear that if P&LE is simply unable to provide the concessions, this fact would provide an additional basis for enjoining the strike.

If, therefore, there is irreparable harm caused by this strike, the court will enjoin it because it is contrary to the Interstate Commerce Act. I will not give P&LE the opportunity to present evidence on the issue of irreparable harm and on the issue of their ability to provide the protections being sought by the plaintiffs. And, for that purpose, we recognize you, Mr. Wyatt, to produce that evidence.

MR.. WYATT: Your Honor, on the issue of irreparable harm, the P&LE would like to call Mr. Jay Simmons of Polysar Corporation, one of P&LE's shippers, and Mr. Johnson would conduct the examination.

THE COURT: Fine.

MR. CLARKE: RLEA would object to any evidence by shippers as to irreparable harm. That goes to the public interest and not the irreparable harm of the P&LE. The P&LE is the one seeking the relief, not the government. Therefore, it is the P&LE harm that is at issue.

THE COURT: I think such matters as the loss of income to the railroad, as well as what the strike is causing in terms of preventing the railroad from fulfilling its duties [7] of supplying transportation to shippers, is relevant to

the question of whether there is irreparable harm, and we will hear from this witness.

You may come forward.

MR. CLARKE: If I may, for the record, we would say—we would stipulate to the effect that the strike has stopped the P&LE service of various customers along the line. And that is action—

THE COURT: Will you stipulate that has caused irreparable harm?

MR. CLARKE: Not irreparable harm to the P&LE. The only reason we are not stipulating there is irreparable harm to the P&LE is because of the existence of what we believe is a service interruption policy, which provides all of the lost revenues back to the P&LE.

We do stipulate—

THE COURT: Well, that certainly is evidence you can bring out, as contrary to any evidence that they present about damage to the railroad. But I think the court must be aware of the extent that the strike causes harm to the shippers, and we cannot just accept your stipulation that there is some interference with the shippers along the line.

We must know the extent of that interference in order to be able to judge what kind of harm is being done.

\* \* \* \*

[46] DONALD VOGEL, called as a witness on behalf of the Plaintiff, having been duly sworn, testified as follows:

MR. CLARKE: May I proceed, Your Honor?

THE COURT: Yes.

#### DIRECT EXAMINATION

BY MR. CLARKE:

Q. Would you please state your name, sir, and your middle initial, and spell your last name for the court reporter?

A. My name is Donald Vogel, Donald K. Vogel. V-O-G-E-L.

\* \* \* \*

[47] A. Yes, I am president of Local 1427 of the Transport Workers Union.

Q. Is that the TWU?

A. Yes, sir.

Q. Mr. Vogel, how long have you been employed by the Pittsburgh & Lake Erie?

A. About 17 and a half years.

Q. In what capacity? What do you do for the P&LE?

A. I am a freight car repair man.

Q. Where do you work?

A. In McKees Rocks.

Q. Now, how long have you been doing that?

A. The 17-year period I have been with the railroad, I have been at McKees Rocks.

Q. Mr. Vogel, can you tell us whether or not the TWU repairs cars that are owned by the P&LE?

A. Yes, they do.

Q. Do they repair cars that are owned by the P&LE that might be found in a bad condition on another line?

A. Yes. Generally these cars are brought back as a bad order car, home shop, and they are sent back to the P&LE at some point in time and repaired in our shop or other shops.

[48] Q. Mr. Vogel, can you tell us, sir, whether or not in the past several days you have had any discussions with the P&LE about who will do the repair work on the 6,000 cars the P&LE will keep once this sale occurs?

A. Yes. Yesterday we had a meeting with Mr. James D. Peters, Mr. Ed Yurcon and Mr. Bob Powell in an attempt—

Q. Spell the last name.

A. Powell, P-O-W-E-L-L. And we did discuss generally what is going to happen to the cars left over as a result of the sale of the P&LE and who was going to repair those cars.

\* \* \* \*

[49] Q. Did they tell you anything about whether the car repair facility will be kept by the P&LE and not transferred to P&LE Railco?

\* \* \* \*

[50] A. I asked them directly, was there a possibility that since Chicago West Pullman was in fact taking over the car shop, was there a possibility that the Pittsburgh & Lake Erie Railroad would then lease back that car shop and very possibly sublease it to someone like Homer Jones and U. S. Steel Rail Car or U. S. Rail Car?

Would, in fact, the P&LE continue to repair cars in that facility and certain of their cars? And they respond I am trying to be quite honest there. I believe that they responded that there was no direct opinion on that at the present time.

Q. Did they tell you whether or not the car repair facility that you have worked at for 17 years is or is not being transferred to the Chicago West Pullman group?

A. They did definitely say that shop was going to Chicago West Pullman.

Q. They did or did not?

A. They did.

Q. So the shop is going over?

A. Yes.

Q. Is there any other car facility where you and your fellow employees work at where you can repair the 6,000 cars that are left?

[51] A. Not a major heavy car repair facility; no. There are spot repair facilities, but certainly nothing with the facilities and capabilities of the K. S. Steel Car Shop.

Q. You have agreements with the P&LE, do you not, dealing with continued employment?

A. That is correct.

Q. Are those agreements—how would you describe that agreement? What does it provide for?

A. Well, we have a grave concern for the loss of—

THE COURT: That is not the question you were asked.

THE WITNESS: Could you give me the question again?

BY MR. CLARKE:

Q. Describe the agreements you have for job stabilization and job security?

A. The job protective agreement we have is generally a blanket agreement for guaranteed work force. It has a moratory clause in it that the P&LE can reopen in, I believe it is 1989, based on car loadings. If the car loadings would happen to fall below a certain level, then they would have again the right to come in and attempt to renegotiate that agreement.

Q. In the meantime until they have the right to renegotiate in 1989, what are they required to do?

A. They are required to maintain an employment—everybody [52] covered by that protective agreement.

Q. Have you asked them about whether or not they will live up to that agreement if the sale occurs?

A. Yes, they have been asked directly several times, and they have answered that they do not necessarily believe that they are going to have to honor all agreements.

Q. What about that agreement?

A. Again, they said that possibly would be a legal issue, and their position was they are not required to honor any agreements.

MR. CLARKE: No further questions.

THE COURT: Cross-examine.

#### CROSS-EXAMINATION

BY MR. WYATT:

Q. Mr. Vogel, you indicated that, under the agreement you testified about, that if the car loadings fell below a certain level, the Pittsburgh & Lake Erie Railroad had a right to reopen and renegotiate the agreement; isn't that your testimony?

MR. CLARKE: There was also a time period of 1989 involved here.

THE COURT: I heard his testimony. He said some time in 1989, I believe.

THE WITNESS: This is correct.

[53] BY MR. WYATT:

Q. Do you have a copy of that agreement in the courtroom with you?

A. I may have a copy of an agreement with some inking on it, but it is probably still legible; yes.

Q. You also testified about remarks made by the Pittsburgh & Lake Erie Railroad personnel to you about their



obligations to honor the agreement. In fact, what they said was that they disputed your interpretation of the agreement as requiring lifetime employment in this circumstance; didn't they?

A. No. In fact, what they said—they were totally hanging their hat on what was coming down from the ICC, that they would be exempt from operations, and it would be up to us to further adjudicate that issue.

MR. WYATT: If I could have a moment here, Your Honor.

BY MR. WYATT:

Q. Mr. Vogel, when were those remarks made to you and by whom?

A. These remarks were made on several occasions. We have had meetings from time to time sporadically at best over the month of September and up to and including yesterday.

Q. The question was what date and by whom?

A. Okay. You are making that very difficult for me to [54] really define exactly what date. I know yesterday the subject did come up about generally were they going to honor all agreements, and would there be any agreements left in place.

And they again said certain agreements—and this is by Mr. Jim Peters. They said certain agreements would possibly have to be left in place. But they did not specify what those agreements would be or which workers were going to be involved.

Q. Your testimony now is that Mr. Peters testified certain agreements would be honored by the P&LE Railroad, isn't that what I understand your testimony to be?

A. Well, he says—yes.

Q. That is your testimony. And he did not specify which agreements those were, did he?

A. No, he did not. He did say there apparently would be some work left for the Pittsburgh & Lake Erie Railroad and that some later time it would have to be determined who would work and would that work be a matter of contractual arrangements.

Q. So Mr. Peters said the question of what contractual arrangements would be honored and with whom would be decided by the Pittsburgh & Lake Erie, but he did not say he would not honor your contract, did he?

A. Not directly; no. He did say that certain of those things would be a matter of a form of arbitration . . .

\* \* \* \*

[55] Q. He did suggest to you it might very well have to be arbitrated as to whether or not the permanent employment guarantees applied in this situation, didn't he?

A. He did not allude to that type of situation.

Q. I think your earlier testimony was that he specifically mentioned it might have to be arbitrated; am I correct?

A. He may not have used the words directly arbitrated, but I am certain that is what was meant, what was implied.

Q. You are certain of that because there is a disputed interpretation of the agreement between you and Mr. Peters as to whether or not it gives you lifetime employment in these circumstances, and a disputed interpretation would have to be arbitrated, wouldn't it?

MR. CLARKE: We have two questions in here. I ask it be broken up.

THE COURT: Do you understand the question?

THE WITNESS: Could you give it to me one at a time?

THE COURT: Read back the question.

(Whereupon, the last question was read back by the court reporter.)

THE COURT: Go ahead and answer.

THE WITNESS: Okay. I would have to take some exception to the way that question was directed to me. I feel we never had the opportunity. I had on several occasions written letters to Mr. Peters asking to have some discussion [56] over the job security issue, and he said he did not feel there was any need to have discussion on certain—on the letters that I issued to him. \* \* \* \*

WILLIAM LARUE, called as a witness on behalf of the Plaintiff, having been duly sworn, testified as follows:

MR. CLARK: May I proceed?

THE COURT: Yes, you may.

#### DIRECT EXAMINATION

BY MR. CLARKE:

Q. Would you please state your name?

[57] A. My name is William LaRue, L-A-R-U-E.

Q. Mr. LaRue, what is your occupation at the present time?

A. I am a vice president of the Brotherhood of Maintenance-of-Way employees.

\* \* \* \*

Q. Now, let me ask you this. On the 7th of October, did you have a meeting with the P&LE?

A. We did.

Q. Now, when you appeared at that meeting with the P&LE, who did you appear on behalf of?

A. I appeared in two capacities.

Q. Tell us what those capacities were.

A. Vice present of the Brotherhood of Maintenance-of-Way with duties in the northeast region of the United States, and [58] spokesman for the 14 rail unions of the RLEA coordinating committee.

Q. What was your purpose in meeting with the P&LE on the 7th, the October 7 meeting?

A. Would you clarify that?

Q. What were you attempting to do at that meeting?

A. At that meeting we were making efforts to resolve our differences as to the effects of the P&LE employees as a result of the sale to the Chicago West Pullman and the loss of jobs.

Q. Were there any questions raised at that meeting to—addressed to P&LE about what employees would remain after the sale occurred?

A. That question came as a result of trying to determine whether the P&LE would apply the current agreements in effect, of all the unions presently on their property. And, yes, there was some additional conversation on exactly what you just asked.

Q. And what crafts were involved in those questions?

A. I specifically asked questions on the TCU or the formerly BRAC.

Q. B-R-A-C?

A. Yes.

Q. Brotherhood of Railway and Airline Clerks?

A. Yes.

[59] Q. What does TCU mean?

A. Transportation Communication Unit.

Q. What did you specifically ask about that union?

A. As a result of their unrealistic answers—

THE COURT: Just answer what you asked about it.

THE WITNESS: Yes, Your Honor. I had asked, since the Interstate Commerce Commission left the shell of a company, following the sale of the assets, and certain of that work had been performed by the BRAC—

BY MR. CLARKE:

Q. Such as what?

A. Such as leasing contracts, and certain other of the clerical work which will continue on with the Pittsburgh & Lake Erie Railroad Company, would they apply the agreement?

Q. Who did you direct that question to?

A. I directed that question to Mr. Jim Peters, and I believe also Mr. Yurcon.

Q. And Mr. Jim Peters, what is his position with the railroad?

A. Mr. Peters is the director of labor relations for the Pittsburgh & Lake Erie Railroad Company.

Q. What was the response? Who made the response, and what he say?

A. Mr. Peters responded that they did not know if there would be any employees, and if the agreement would apply.

# PITTSBURGH & LAKE ERIE RR

OCTOBER 27, 1987

## LABOR GROUP TO SAVE P&LE JOBS

INTERNATIONAL ASSOCIATION OF MACHINISTS &  
AEROSPACE WORKERS  
INTERNATIONAL BROTHERHOOD OF BOILERMAKERS &  
BLACKSMITHS  
AMERICAN RAILWAY & AIRWAY SUPERVISORS ASSOCIATION  
TRANSPORTATION COMMUNICATIONS INTERNATIONAL UNION  
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS  
SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION  
INTERNATIONAL BROTHERHOOD OF FIREMAN & OILERS—  
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
AMERICAN TRAIN DISPATCHERS ASSOCIATION  
BROTHERHOOD OF LOCOMOTIVE ENGINEERS  
TRANSPORT WORKERS UNION OF AMERICA  
BROTHERHOOD OF RAILROAD SIGNALMEN

## OFFICIAL PRESS RELEASE re: P&LE RR

PRIOR TO THE RESUMPTION OF STRIKE ACTIVITY ON THE P&LE RR A FULL BRIEFING AND DISCUSSION WILL BE HELD THE EVENING THURSDAY OCT. 29, 1987 FOR ALL LOCAL CHAIRMEN.

Also to be discussed:

Details of proposal for ESOP (employee ownership plan) Now that General Electric Credit Corp. is pulling out of CWPT plan it is felt that P&LE RR might finally be willing to allow workers a chance at a partnership in a plan to save the P&LE. We are serious on this plan, we have the financial backing, the P&LE has only to come off of its high horse and talk *SERIOUSLY*.

Also, information has it that some rolling stock is about to formally change hands to the CWPT even before the sale is complete.



Reaffirmation that all locals are resolute in their full support of the strike action as determined at a *local level*.

The call is out for a major demonstration in Washington D.C. by all rail labor. The P&LE RR shall not be remembered as "having gone down fighting" but rather as the first success in stopping the RAPE of railroad employees. We are *determined*, our leaders shall again be so informed.

AN OPEN STATEMENT TO THE P&LE RR / PLE RAILCO INC.-COME TO THE TABLE. ---- CHICAGO OUT---- EMPLOYEES IN. ---- BUT IF IT'S A FIGHT YOU WANT, A FIGHT YOU WILL GET.

RESPECTFULLY SUBMITTED,  
LABOR GROUP TO SAVE P&LE JOBS

# WESTERN UNION MAILGRAM

DONALD VOGEL  
851 COTTONWOOD DR  
MONROEVILLE PA 15146

JAMES D PETERS DIRECTOR OF LABOR  
RELATIONS PITTSBURGH AND LAKE ERIE RAILROAD  
4 STATION SQUARE - COMMERCE COURT  
PITTSBURGH PA 15219

DEAR SIR,

THIS LETTER COMES IN THE FORM OF AN INQUIRY AS TO WHETHER YOU INTEND TO NOW COMPLY WITH THE RAILWAY LABOR ACT AND ENTER INTO MEANINGFUL NEGOTIATIONS REGARDING THE SALE OF THE P&LE RAILROAD TO THE C.W.P.T.? EMPHASIS ON THE USE OF THE WORD NEGOTIATIONS.

SINCE YOU HAVE SOME DIFFICULTY WITH THE FINANCIAL ARRANGEMENTS IN THE SALE WOULD THE P&LE NOW BE WILLING TO GIVE SERIOUS CONSIDERATION TO AN ESOP OR PARTNERSHIP PROGRAM? THIS AS OPPOSED TO THE SALE TO C.W.P.T.

RETENTION OF THE STATUS QUO AS PROVIDED UNDER THE RAILWAY LABOR ACT REMAINS A MUST IF ANY OF THE ABOVE MENTIONED ITEMS ARE TO BE NEGOTIATED. PLEASE RESPOND SOONEST.

SINCERELY,

DONALD K VOGEL PRESIDENT LOCAL 1427  
TRANSPORT WORKERS UNION OF AMERICA AND IN  
BEHALF OF LABOR GROUP TO SAVE P&LE JOBS

10:37 EST

MGMCOMP

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 87-1745

RAILWAY LABOR EXECUTIVES' ASSOCIATION  
*Plaintiff,*  
v.

PITTSBURGH & LAKE ERIE RAILROAD COMPANY,  
*Defendant.*

THIRD SUPPLEMENTAL AFFIDAVIT  
OF GORDON E. NEUENSCHWANDER

COMES NOW GORDON E. NEUENSCHWANDER,  
who having been duly sworn on oath, deposes and says:

1. This supplements my previous Affidavit submitted in  
Civil Action No. 87-1745.

2. The sales transaction between Railco and Pittsburgh  
& Lake Erie Railroad Company has as of this date not  
closed. We do not anticipate closure prior to Thanksgiving.  
The delay in closure has been a direct result of the un-  
willingness of parties which were to provide the financial  
backing to Railco to proceed in the weeks following the  
strike. Since these parties have withdrawn from the trans-  
action, Railco has attempted to develop alternate sources  
of financing.

3. In part, the illegal work stoppage and the threat of  
a future illegal work stoppage following the reversal of  
this Court's conclusion that the Interstate Commerce Act  
can be accommodated to the Norris-LaGuardia Act by the  
Third Circuit Court of Appeals had brought about a with-  
drawal of financial support from this transaction.

4. It will be extremely difficult for Railco to obtain fi-  
nancing to complete the transaction as long as there exists  
the threat that rail labor may call a local strike or regional  
strike if the transaction appears likely to take place. Their  
press release following the Third Circuit's ruling indicates  
they intend to strike before any transaction takes place.  
A copy is attached.

5. At this point, P&LE exists on a week-by-week basis  
at the discretion of its 22 principal creditors. They have  
indicated to me as President of the Pittsburgh & Lake  
Erie, that should the transaction with Railco fail to take  
place, further drastic measures would have to be imme-  
diately considered including abandonment or bankruptcy.

6. In my judgment, the sale to Railco is the only viable  
course of action for the Pittsburgh & Lake Erie Railroad  
Company. I have spent countless hours over the last sev-  
eral years trying to convince other major railroads that  
they should consider Pittsburgh & Lake Erie Railroad  
Company as an acquisition candidate. All of them have  
declined to do so.

7. The only purchaser that has expressed a willingness  
to acquire the Pittsburgh & Lake Erie and indeed the only  
purchaser to actually submit a purchase proposal was  
Railco. At this point, Railco is the only serious prospective  
purchaser of the railroad and failure to consummate this  
transaction will result in dire consequences for all con-  
cerned parties.

8. I have read the foregoing Supplemental Affidavit con-  
sisting of three pages and swear it is true and correct to  
the best of my knowledge and belief.

/s/ Gordon E. Neuenschwander  
Gordon E. Neuenschwander

Sworn and subscribed before me,  
a Notary Public in and for the  
County of Allegheny, PA, this

13th day of November, 1987.

/s/ Donna L. Woshner  
Notary Public

DONNA L. WOSHNER, NOTARY PUBLIC  
PITTSBURGH, ALLEGHENY COUNTY  
MY COMMISSION EXPIRES OCT. 26, 1991  
Member, Pennsylvania Association of Notaries

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

\_\_\_\_\_  
Civil Action No. 87-1745  
\_\_\_\_\_

RAILWAY LABOR EXECUTIVES' ASSOCIATION  
*Plaintiff,*

v.

PITTSBURGH & LAKE ERIE RAILROAD COMPANY,  
*Defendant.*

FOURTH SUPPLEMENTAL AFFIDAVIT  
OF JAMES D. PETERS

I, JAMES D. PETERS, being duly sworn on oath, depose and state as follows:

1. I am Director, Labor Relations, for The Pittsburgh and Lake Erie Railroad Company ("P&LE"). In this position, I have participated in meetings with P&LE's unions concerning the effects of the sale of P&LE's rail assets.

2. The purpose of this supplemental affidavit is to supplement the information provided in my prior four affidavits filed in this action.

3. After this Court ruled on October 8, 1987 that P&LE is relieved of its duty to negotiate with its unions concerning the effect of its sale on P&LE employees, P&LE met with representatives of all of its unions on October 9, 1987 to attempt to reach an agreement on the effects of the sale. P&LE's agreement to meet on the subject was without waiver or prejudice to its position that it does not have a duty to bargain over the effects of the sale.

4. At the October 9, 1987 meeting between P&LE and its unions, P&LE informed the unions that its last effects



offer remained open. A copy of that offer is attached as Exhibit 3 to my Third Supplemental Affidavit of October 8, 1987 which was submitted to this Court by letter dated October 8, 1987 from G. Edward Yurcon, Vice President-Law, P&LE. No agreement was reached at the October 9, 1987 meeting and, by mutual agreement, the meetings have been recessed until the parties agree to reconvene.

5. P&LE stands ready to meet with its unions to attempt to reach an agreement on the effects of the sale and will remain willing to do so after P&LE has completed the sale of its rail assets.

/s/ James D. Peters  
James D. Peters

Sworn to and subscribed before me, a Notary Public in and for the County of Allegheny, PA, this 13th day of November, 1987.

/s/ Donna L. Woshner

My Commission Expires: —

DONNA L. WOSHNER, NOTARY PUBLIC  
PITTSBURGH, ALLEGHENY COUNTY  
MY COMMISSION EXPIRES OCT. 26, 1991  
Member, Pennsylvania Association of Notaries

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT  
OF PENNSYLVANIA

— —  
Civil Action  
No. 87-1745  
— —

RAILWAY LABOR EXECUTIVES' ASSOCIATION,  
*Plaintiff,*  
v.

PITTSBURGH & LAKE ERIE RAILROAD COMPANY,  
*Defendant.*

MOTION OF PLAINTIFF RAILWAY LABOR  
EXECUTIVES' ASSOCIATION FOR SUMMARY  
JUDGMENT

Pursuant to Fed. R. Civ. P. 56, plaintiff, Railway Labor Executives' Association ("RLEA") moves for summary judgment declaring that defendant Pittsburgh & Lake Erie Railroad Co. ("P&LE") is required by the Railway Labor Act ("RLA"), 45 U.S.C. §151, *et seq.*, to give notice under Section 6 of the Act, 45 U.S.C. §156, and to bargain with the unions which represent its employees regarding the impact of the sale of virtually all of its rail properties on those employees, in accordance with the negotiation and dispute resolution processes of the RLA, before such sale is consummated. RLEA also requests that the Court enter a permanent injunction requiring defendant P&LE, its directors and officers to give the requisite notices under Section 6 of the Railway Labor Act, to bargain with rail labor over the impact of the sale on its employees and their existing contractual rights, and to maintain the status

quo which currently exists until it has complied fully with its notice and bargaining obligations.

RLEA submits that there are no material facts in dispute in this matter and that for the reasons set forth in the memorandum accompanying this motion, RLEA is entitled to judgment as a matter of law.

Respectfully submitted,

/s/ John O'B. Clarke, Jr.

John O'B. Clarke, Jr.

HIGSAW & MAHONEY,  
P.C.

Suite 210  
1050 17th Street, N.W.  
Washington, D.C. 20036  
(202) 296-8500

Graydon R. Brewer

GREENFIELD & MURTAGH  
728 Fifth Avenue  
Pittsburgh, Pennsylvania 15219  
(412) 261-4466

Attorneys for Plaintiff Railway  
Labor Executives' Association

Date: November 13, 1987

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 87-1745  
Judge Bloch

RAILWAY LABOR EXECUTIVES' ASSOCIATION

*Plaintiff,*

v.

PITTSBURGH & LAKE ERIE RAILROAD COMPANY,

*Defendant.*

FIFTH SUPPLEMENTAL AFFIDAVIT  
OF JAMES D. PETERS

COMES NOW, JAMES D. PETERS, who having been duly sworn on oath, deposes and says:

1. This Affidavit supplements my previous Affidavits given in connection with case number 87-1745.

2. I have never told any member of RLEA, or any Pittsburgh & Lake Erie Railroad Company employee, that P&LE intended to terminate its collective bargaining agreements after the sale of its railroad assets to Railco, Inc. Rather, it has always been our position that P&LE would continue to honor its agreements. I have, as Mr. Vogel testified in Judge Bloch's Court on October 8, 1987, told RLEA representatives that P&LE did not believe the sale of its rail assets triggered the labor protections contained in certain agreements. I also told Mr. Vogel and others that P&LE did not believe the so-called job guarantees for TWU employees were binding on the company if its assets were sold. I also made it clear that we would arbitrate these disputes if need be since P&LE considers itself to be bound by the arbitration clauses in the contracts.

I have read the foregoing consisting of two pages and swear that it is true and correct to the best of my knowledge and belief.

---

James D. Peters

Subscribed and sworn to  
before me this \_\_\_\_ day  
of November, 1987.

---

Notary Public

Mediation Agreement  
Case No. A-11616

**MEMORANDUM OF AGREEMENT BETWEEN THE  
PITTSBURGH & LAKE ERIE RAILROAD COMPANY  
AND THE EMPLOYEES THEREON REPRESENTED BY  
THE BROTHERHOOD OF RAILWAY, AIRLINE AND  
STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS  
AND STATION EMPLOYEES**

**IT IS HEREBY AGREED:**

**ARTICLE I - WAGES**

- A. Effective on January 15, 1986, the prevailing paid rates of pay (including cost-of-living allowances) of all employees covered by this Agreement shall be reduced by twelve (12%) percent.
- B. This wage reduction shall be applied in the same manner as general wage increases have been applied in the past so as to give effect to this reduction in pay irrespective of the method of payment.
- C. This wage reduction will become effective on January 15, 1986, and will remain in effect for 24 months thereafter, following which the wage rates will revert to those in effect prior to the twelve (12%) percent reduction being applied.
- D. During the 24-month period in which the wage reduction provided for in this Article I is in effect, the 12% wage reduction will be subject to adjustment on the following basis:
  - (1) In any quarter following a quarter in which the average monthly revenue carloads exceed 10,000 but are less than 11,000, the wage reduction will be adjusted to 11%.



- (2) In any quarter following a quarter in which the average monthly revenue carloads exceed 11,000, the wage reduction will be adjusted to 10%.
- (3) The wage reduction will revert to 12% in the quarter following the adjustment period unless the average monthly revenue carloads in the adjustment period justify an adjustment as provided for in subparagraphs 1 and 2 above.

## ARTICLE II - OPERATION OF COMPUTER CENTER

- A. Notwithstanding any existing rule, agreement or practice to the contrary, effective on the date of this Agreement, Carrier shall have the right to operate the Computer Center on a three-trick basis to meet operating requirements which it is understood can be on a 5, 6 or 7-day basis.

## ARTICLE IX - SALE

- A. If, while Article I of this Agreement is in effect, The Pittsburgh & Lake Erie Railroad Company is sold to and merged with another Carrier, with I.C.C. approval, employees covered by this Agreement will have their wage rates restored to the rates that were in effect prior to the wage reduction provided for in Article I of this Agreement being applied.

## ARTICLE X - FREEZE OF MANAGEMENT WAGES

- A. While a wage reduction as provided for in Article I of this Agreement is in effect, the total wage compensation of the 33 top management personnel will not be increased.

## ARTICLE XI - EFFECT OF THIS AGREEMENT

- A. This Agreement is in settlement of the dispute growing out of Attachment A of the Notice served on the Carrier by the Organization signatory hereto dated March

- 29, 1984 and the Supplemental Notice dated July 26, 1985 and the attachment thereto relating to wages and rules changes and the Notice served by the Carrier on August 29, 1984 for concurrent handling therewith.
- B. This Agreement will become effective on January 15, 1986 and, except as provided for in Articles I, VII and X hereof, shall remain in effect thereafter until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.
- C. Except as otherwise agreed to, neither party to this Agreement shall serve any notice or proposal to change any matter contained in this Agreement or in the proposals identified in Section A hereof, prior to October 15, 1987 (not to become effective prior to January 15, 1988), and any pending notices which propose such matters are hereby withdrawn.
- D. This Article will not bar the Carrier and the Organization from agreeing on any subject matter of mutual interest.

Signed at Pittsburgh, PA this 14th day of January, 1986.

FOR THE BROTHERHOOD OFFOR THE PITTSBURGH & LAKE  
RAILWAY, AIRLINE ANDERIE RAILROAD COMPANY:  
STEAMSHIP CLERKS, FREIGHT  
HANDLERS, EXPRESS AND /s/ James D. Peters  
STATION EMPLOYEES. Director-Labor Relations

/s/ Robert A. Scardelletti  
General Chairman

APPROVED:

/s/ R.J. Kilroy  
President

Mediation Agreement  
Case No. A-11615

**MEMORANDUM OF AGREEMENT BETWEEN THE  
PITTSBURGH & LAKE ERIE RAILROAD COMPANY  
AND THE EMPLOYEES THEREON REPRESENTED BY  
LODGE NO. 5061, AMERICAN RAILWAY & AIRWAY  
SUPERVISORS ASSOCIATION**

**IT IS HEREBY AGREED:**

**ARTICLE I - WAGES**

- A. Effective on October 1, 1986, the prevailing paid rates of pay (including cost-of-living allowances) of all employees covered by this Agreement shall be reduced by twelve (12%) percent.
- B. This wage reduction shall be applied in the same manner as general wage increases have been applied in the past so as to give effect to this reduction in pay irrespective of the method of payment.
- C. This wage reduction will become effective on October 1, 1986, and will remain in effect for 24 months thereafter, following which the wage rates will revert to those in effect prior to the twelve (12%) percent reduction being applied.
- D. During the 24-month period in which the wage reduction provided for in this Article I is in effect, the 12% wage reduction will be subject to adjustment on the following basis:
  - (1) In any quarter following a quarter in which the average monthly revenue carloads exceed 10,000 but are less than 11,000, the wage reduction will be adjusted to 11%.
  - (2) In any quarter following a quarter in which the average monthly revenue carloads exceed 11,000, the wage reduction will be adjusted to 10%.

- (3) The wage reduction will revert to 12% in the quarter following the adjustment period unless the average monthly revenue carloads in the adjustment period justify an adjustment as provided for in subparagraphs 1 and 2 above.

**ARTICLE II - TERMINATION OF SENIORITY**

- A. The seniority of any employee who establishes seniority in a craft represented by the Organization signatory hereto, after the effective date of this Agreement and who does not perform any active service with the Carrier for 24 consecutive months shall be terminated.

or strike provided that such conditions result in suspension of the Carrier's operations in whole or in part. It is understood and agreed that such temporary force reductions will be confined solely to those work locations directly affected by any suspension of operations. No advance notice of force reduction to employees is required under the foregoing conditions.

- (1) When forces have been so reduced and thereafter operations are restored, such employees must be recalled upon the termination of the emergency.
- (2) It is understood that the term "strike" as used in this subsection is not confined to a strike by any of Carrier's employees, but can be a strike in another business or industry, wherein Carrier's operations are affected in whole or in part.

**ARTICLE IV - ACQUISITION**

- A. If, while Article I of this Agreement is in effect, this Carrier acquires employees of the Norfolk Southern in connection with acquisition of Norfolk Southern rail lines, as a result of the sale of Conrail to the Norfolk Southern, employees covered by this Agreement will have their wage rates adjusted to equal the rates paid

to such acquired employees six (6) months after the date such employees are acquired.

#### ARTICLE V - SALE

- A. If, while Article I of this Agreement is in effect, The Pittsburgh & Lake Erie Railroad Company is sold to and merged with another Carrier, with I.C.C. approval, employees covered by this Agreement will have their wage rates restored to the rates that were in effect prior to the wage reduction provided for in Article I of this Agreement being applied.

#### ARTICLE VI - INSURED BENEFITS

Existing arrangements shall be continued for coverage of Supervisors for insured benefits under policies negotiated nationally by the Carriers' Conference Committee and participating Railroad Labor Organizations, including policy changes as may result from current national negotiations. Subsequent requests for changes in insured benefits shall be governed by the applicable moratorium provisions resulting from current national negotiations.

Mediation Agreement  
Case No. A-11613

#### MEMORANDUM OF AGREEMENT BETWEEN THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY AND THE EMPLOYEES THEREON REPRESENTED BY LODGE NO. 5062, AMERICAN RAILWAY & AIRWAY SUPERVISORS ASSOCIATION

IT IS HEREBY AGREED:

#### ARTICLE I - MONTHLY RATES

Effective October 1, 1986, existing monthly rates of pay shall be reduced by \$115.00 per month. Thereafter, employees represented by the Organization signatory hereto shall be paid at the punitive hourly rate of their position for all time worked in excess of the normal hours exclusive of transfer time, preparatory time and/or end of day time of their assignment, and any existing rules or practices to the contrary are hereby amended to that extent. This Article will become effective on October 1, 1986 and will remain in effect for 24 months thereafter, after which the \$115.00 per month will be restored and the previous overtime provisions will again be effective.

#### ARTICLE II - WAGES

- A. Effective on October 1, 1986, and after the application of Article I of this Agreement, the prevailing paid rates of pay (including cost-of-living allowances) of all employees covered by this Agreement shall be reduced by twelve (12%) percent.
- B. This wage reduction shall be applied in the same manner as general wage increases have been applied in the past so as to give effect to this reduction in pay irrespective of the method of payment.
- C. This wage reduction will become effective on October 1, 1986, and will remain in effect for 24 months there-



after, following which the wage rates will revert to those in effect prior to the twelve (12%) percent reduction being applied.

D. During the 24-month period in which the wage reduction provided for in this Article II is in effect, the 12% wage reduction will be subject to adjustment on the following basis:

- (1) In any quarter following a quarter in which the average monthly revenue carloads exceed 10,000 but are less than 11,000, the wage reduction will be adjusted to 11%.
- (2) In any quarter following a quarter in which the average monthly revenue carloads exceed 11,000, the wage reduction will be adjusted to 10%.
- (3) The wage reduction will revert to 12% in the quarter following the adjustment period unless the average monthly revenue

In case a dispute arises involving an interpretation or application of the award, the Committee, upon request of either party, shall interpret the award in light of the dispute.

- (9) The Committee hereby established shall continue in existence until it has disposed of the issue submitted to it under this Section, after which it will cease to exist, except for interpretation of its award as above provided.
- D. Notwithstanding the provisions of any other subsection of this Article IV, the Carrier shall have the right to furlough its employees under emergency conditions such as flood, snow storm, hurricane, tornado, earthquake, fire or strike provided that such conditions result in suspension of the Carrier's operations in whole or in part. It is understood and agreed that such temporary force reductions will be confined solely to those work

locations directly affected by any suspension of operations. No advance notice of force reduction to employees is required under the foregoing conditions.

- (1) When forces have been so reduced and thereafter operations are restored, such employees must be recalled upon the termination of the emergency.
- (2) It is understood that the term "strike" as used in this subsection is not confined to a strike by any of Carrier's employees, but can be a strike in another business or industry, wherein Carrier's operations are affected in whole or in part.

#### ARTICLE V - ACQUISITION

- A. If, while Article II of this Agreement is in effect, this Carrier acquires employees of the Norfolk Southern in connection with acquisition of Norfolk Southern rail lines, as a result of the sale of Conrail to the Norfolk Southern, employees covered by this Agreement will have their wage rates adjusted to equal the rates paid to such acquired employees six (6) months after the date such employees are acquired.

#### ARTICLE VI - SALE

- A. If, while Article II of this Agreement is in effect, The Pittsburgh & Lake Erie Railroad Company is sold to and merged with another Carrier, with I.C.C. approval, employees covered by this Agreement will have their wage rates restored to the rates that were in effect prior to the wage reduction provided for in Article II of this Agreement being applied.

Mediation Agreement  
Case No. A-11542

**MEMORANDUM OF AGREEMENT BETWEEN THE  
PITTSBURGH & LAKE ERIE RAILROAD COMPANY  
AND THE EMPLOYEES THEREON REPRESENTED BY  
THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

**IT IS HEREBY AGREED:**

**ARTICLE I - WAGES OF LOCOMOTIVE ENGINEERS**

- A. Effective on January 29, 1986, all prevailing paid rates of pay (including cost-of-living allowances) of Locomotive Engineers shall be reduced by twelve (12) percent.
- B. This wage reduction shall be applied in the same manner as general wage increases have been applied in the past so as to give effect to this reduction in pay irrespective of the method of payment.
- C. In determining new hourly rates, fractions of a cent will be disposed of by applying the next higher quarter of a cent.
- D. This wage reduction will become effective on January 29, 1986, and will remain in effect for 24 months thereafter, following which the wage rates will revert to those in effect prior to the twelve (12) percent reduction being applied.

**ARTICLE II - ARBITRARIES**

- A. Effective on January 29, 1986, the arbitrary allowance paid to employees covered by this Agreement for delivering trains to and/or receiving trains from Newell Interchange as provided for in Article 24, as amended, shall be eliminated.
- B. Effective on January 29, 1986, the arbitrary allowances listed below paid to employees covered by this Agree-

ment shall be reduced to the amounts indicated:

*1. Initial Terminal Delay*

Payment for ITD shall be paid in accordance with the existing agreement on a minute basis at 1/10th of the basic daily rate according to the class of engine used.

*2. Final Terminal Delay*

Payment for FTD shall be paid in accordance with the existing agreement except that payment shall be on a minute basis at

- C. Initial Terminal Delay for engine service employees of westbound trains originating at Monessen shall be paid on a minute basis after the lapse of one hour and 30 minutes.

**ARTICLE IX - NEW EMPLOYEES**

- A. Employees hired after the effective date of this Agreement shall be paid at 75 percent of the applicable rate of pay (including COLA) of the service to which assigned. This rate will increase five (5) percent per year of active service until it is equal to the standard rate.
- B. Existing arbitrary allowances as listed on Attachment "B" hereof, shall not be applicable to employees hired after the effective date of this Agreement.

**ARTICLE X - ACQUISITION**

- A. If, while Article I of this Agreement is in effect, this Carrier or its holding company acquires employees of the Norfolk Southern in connection with acquisition of Norfolk Southern rail lines, as a result of the sale of Conrail to the Norfolk Southern, employees covered by this Agreement will have their wage rates adjusted to equal the rates paid to such acquired employees six (6) months after the date such employees are acquired.

**ARTICLE XI - SALE**

- A. If, while Article I of this Agreement is in effect, The Pittsburgh & Lake Erie Railroad Company is sold to and merged with another Carrier, with I.C.C. approval, employees covered by this Agreement will have their wage rates restored to the rates that were in effect prior to the wage reduction provided for in Article I of this Agreement being applied.

**ARTICLE XII - EFFECT OF THIS AGREEMENT**

- A. This Agreement is in settlement of the dispute growing out of Attachment "A" of the Notice served on the Carrier by the Organization signatory hereto dated January 30, 1984 and the Notice served by the Carrier on August 29, 1984 for concurrent handling therewith.
- B. This Agreement will become effective on January 29, 1986 and, except as provided for in Article I hereof, shall remain in effect thereafter until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.
- C. Except as otherwise agreed to, neither party to this Agreement shall serve any notice or proposal to change any matter contained in this Agreement or in the proposals identified in Section A hereof, prior to October 29,

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**Civil Action  
Nos. 87-1745  
87-2332**

RAILWAY LABOR EXECUTIVES ASSOCIATION,  
vs.

PITTSBURGH & LAKE ERIE RAILROAD CO.

**PROCEEDINGS**

Transcript of Telephone Conferences held on November 23, 1987, United States District Court, Pittsburgh, Pennsylvania, before the Honorable Alan N. Bloch, D.J.

**APPEARANCES:**

For the P&LE Railroad: Richard Wyatt, Esq.  
Ronald M. Johnson, Esq.  
G. Edward Yurcon, Esq.

For the R L E A: John Clarke, Esq.  
Graydon Brewer, Esq.

Jordan Lilienthal, Reporter  
1029 U. S. Courthouse  
Pittsburgh, Pa 156219  
412-281-8184

Proceedings recorded by mechanical stenography. Transcript produced by notereading.

• • • •

THE COURT: All right. With that in mind, I don't think there is any necessity for having a hearing tomorrow and I am going to make the following ruling: The Court is



ruling that, as a matter of law, the Pittsburgh & Lake Erie Railroad has an obligation to bargain with the representatives of its employees concerning the effects of the sale, pursuant to Section six of the Railway Labor Act.

Therefore, the Court is entering an Order at this time, directing Defendant Pittsburgh & Lake Erie Railroad to comply with the provisions of the Railway Labor Act concerning resolution of this dispute. The Court further is enjoining Pittsburgh & Lake Erie Railroad from altering the pay, rules and working conditions in existence at the time this dispute arose. That is, the sale of Pittsburgh & Lake Erie assets is enjoined to the extent that such sale does not include provisions for the maintenance of the status quo, that is, provisions prohibiting the alteration of the pay, rules and working conditions existing at the time this dispute arose. The injunction shall remain in effect until such time as the dispute resolution procedures set forth in the Railway Labor Act have been completed.

[10] We will be issuing a written Order to this effect, but I am entering the Order orally at this time.

Are there any questions?

MR. CLARKE: No questions, Your Honor.

MR. WYATT: Your Honor, at this time could we make an oral motion to stay the issuance of the injunction pending appeal and ask the Court to rule on that?

THE COURT: Well, I have no problem as long as the status quo does not change while an appeal is entered. I don't have any problem with that. But, that amounts to the same thing that I am entering here. I am not going to allow you to go on with the sale, if it does not contain

provisions ensuring the status quo and I will not let you do that while you take appeal.

So what I think should be done is that I should enter my injunction and you can take your appeal. And if I am incorrect, the Circuit will tell me that and then you can go on with your sale, without these provisions in it.

I also want you to know that I am not enjoining the sale completely. I am enjoining the sale, if it does not contain provisions keeping the status quo until the provisions of the Railway Labor Act have been completed.

\* \* \* \*

MR. WYATT: Your Honor, could I turn to a couple of housekeeping matters on the earlier conference call we had?

THE COURT: Fine.

MR. WYATT: We understood the Court's ruling to be that P&LE had no duty to bargain over its decision with RLEA.

THE COURT: Its decision to sell?

MR. WYATT: Yes, Your Honor.

THE COURT: That is right.

MR. WYATT: We also understand the Court's ruling to be that the sale to Railco is enjoined unless Railco agrees to assume the employees, the collective bargaining agreement, the status quo obligations and bargaining obligations of the P&LE, as found to exist by this Court.

THE COURT: That is right. As I indicated to you, I was not enjoining the sale as such. The Railroad has every right to sell, as long as they maintain the status quo.

MR. CLARKE: The RLEA doesn't disagree with that.

MR. WYATT: Will Your Honor be entering findings and conclusions?

[19] THE COURT: There really aren't any facts in dispute. We will state that we will be issuing a written opinion in the next couple of days, both in our decision that we made late last week, in the other case, as well as in this case. We will be issuing a written opinion; yes.

MR. WYATT: Under Section nine of the Norris-La-Guardia Act, I believe the Court would be obligated in this case to enter findings of fact and conclusions of law.

THE COURT: Well, yes, the findings of fact are going to be very simple because you stipulated that you have not completed the process as required by the Railway Labor Act.

We will make those findings based upon your stipulation and make conclusions of law based upon those facts and our reading of the law, as it applies to these facts. That is what we intend to do.

SUPREME COURT OF THE UNITED STATES

No. 87-1589

PITTSBURGH & LAKE ERIE RAILROAD COMPANY,  
*Petitioner*

v.

RAILWAY LABOR EXECUTIVES' ASSOCIATION

ORDER ALLOWING CERTIORARI. Filed November 28, 1988.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted. This case is consolidated with No. 87-1888, *Pittsburgh & Lake Erie Railroad Company v. Railway Labor Executives' Association, et al.*, and a total of one hour and thirty minutes is allotted for oral argument.

November 28, 1988

SUPREME COURT OF THE UNITED STATES

---

No. 87-1888

---

PITTSBURGH & LAKE ERIE RAILROAD COMPANY,  
*Petitioner*

v.

RAILWAY LABOR EXECUTIVES' ASSOCIATION, *et al.*

ORDER ALLOWING CERTIORARI. Filed November  
28, 1988

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted. This case is consolidated with No. 87-1589, *Pittsburgh & Lake Erie Railroad Company v. Railway Labor Executives' Association*, and a total of one hour and thirty minutes is allotted for oral argument.

November 28, 1988